

THE
Poor Vicar's
P L E A;

DECLARING,

That a Competency of Means is due to
them out of the TYTHES of their
several Parishes, notwithstanding the
Impropriations.

Written by *THOMAS RYVES*,
Doctor of the Civil Laws.

*Ad tenuitatem Beneficiorum necessario sequitur ig-
norantia Sacerdotum. Panormit.*



L O N D O N :

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THE

POOL VICALS

P. H. E. A.

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TO HIS
Sacred Majesty.

MOST Religious and Gracious Sovereign,
As it is not unknown to the World, in
how miserable a plight our poor Church
of IRELAND standeth at this present;
So we of that Kingdom know right well, and with
all thankfulness acknowledge, that your Majesty hath
ever made it one of your most Princely and Chri-
stian cares, to raise her up again, if by any means
you could, out of the dust, and to set her among the
Daughters, as sometimes you did her Sister of
SCOTLAND, which formerly lay buried under
the like heap of Impropriations, as the other doth
at this present time.

The Knowledge whereof, dread Sovereign, hath
emboldned me, the meanest of all the Professors of
the Laws, to present this short Discourse unto your
Highness: wherein I have endeavoured to prove,
that the Poor Ministers of that Church, ought to be
more competently provided for, than now they are,
and that, out of the Tythes belonging to their several
Churches, not by Prerogative, whereof your Majesty
is ever sparefull, but by a due course of Law al-
ready there Established: Wishing from my heart,
that this cause of GOD and of his Church, had
found an Advocate, answerable to the Dignity and Jus-
tice of it. As it is, I shall humbly beseech your
A 2 Majesty,

DEDICATION.

Majesty, that neither the unworthiness of my Person, neither yet the unlikelihoood of the matter, be any prejudice to the Worth and Truth of the cause it self ; but rather, that your Highness will vouchsafe to look down upon this poor endeavour of your humble Servant, with a favourable Eye, and to supply those manifold defects, which may happily be found in the handling of so great and difficult a Cause, out of that abundant and incomparable Treasure of Learning and Wisdom, which GOD hath so Richly endow'd your Princely Mind withal : In hope whereof, with my humble Prayers to Almighty God, for the preservation of your Majesty's long and prosperous Reign, I rest,

Your Highness's

Most Loyal Subject,

and Humble Servant,

THO. RYVES.

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FOR
 TYTHES.

THE prosperous and happy Peace which this Poor Kingdom of IRELAND hath of late Years enjoyed, is such, as neither our Fathers ever saw, nor can be sampled out of any Records or Histories of former Ages. The Plough now walketh without Fear, the way-faring Man travelleth without Danger, the Laws are executed in every Place alike. *Cocherings* are reduced to *Chief-Rents*, The poor Tenant beginneth to stand for his Right against his tyrannizing and cutting Landlord : The name of a *Kerne* is

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almost forgotten. The Woods and Fastness are left for Beasts. The Men are drawn to Villages and Towns, and all reduc'd (thanked be God) to a measure of good Civility.

Only the Church in this common Joy mourneth, looking pale and wan, as if she had been either newly taken out of a burning Fever, or came lately flying out of a bloody Battle. The Churches in most places lye wast: and where Churches are, there want, rather Ministers able to instruct the People, than People capable of Instruction. So that, if his Majesty should be pleased to cast his Eye upon the Temporal and Ecclesiastical Estate of this his Kingdom both at once, he might well sigh in himself, and say, as sometime King David did, *Ecce Ego nunc habito in domo cedrina, dum arca faderis sub aulais.*

1. Lib.
Chron. c.
17. v. 11

Neither is the Cause of this her Poverty and extreme Calamity, hard to be discerned: Would God the Remedy were as easie to be found. The sole Cause therefore of this her Misery, is the Multitude of *Benefices* long since taken from the daily Ministers of the Churches, and converted to other Uses: But principally and in greatest Number appropriated to the Luxury of the Monks.

For

For there was an Age when *Christian Religion* seemed to consist only in building of *Monasteries*, and in bestowing large Revenues upon them when they were built. But those *Monkery's*, as they were from the beginning exceeding burdensome to the Temporal Estate of all Kingdoms in which they were erected, so in short time they grew baneful to the Churches, by reason of the multitude of Church-Livings which they procured daily to be Appropriated to their uses: whereupon it was, that (among other Grievances) which the *Christian Nations* complained of in the Council of *Constance*, and whereof they requir'd Reformation; this was one, That the number of *Unions* and *Incorporations*, that is to say, of *Appropriations*, was over much increased in all Kingdoms. And the *Council* thereupon decreed, That all such *Appropriations* as had been in certain Years before should be reversed; Yet with this Reservation, viz. *Unless they were made upon just and Lawful Causes*: which was nothing else, but to blind the Eyes of the World, and to send away the Complainants, content for the present. The *Council of Trent* Concil. Trident. Sess. 7. also not long after revoked all *Appropriations*, which had been made in For-

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pet. Rebus-
fus Tracta.
nominati-
um.

ty Years before. But I could never find that this *Canon* took effect any more than the other of *Constance* did. Sure I am, that the *French* Writers complain, that they have been as frequent in *France* since that *Council* as before : and so frequent, that the *Universities*, (which by a laudable custom of that Realm have a Right of *Nomination* to a third part of the Benefices therein, together with the Secular *Clergy*, and *Lay-Patrons*, finding no measure in them, nor other Remedy against them) use to appeal from them, as from abuses, to the high Court of *Parliament* in that Kingdom.

Neither have these *Monasteries* done more harm to the *Church* in themselves, than they have by their example. For from them, *Chantries*, *Colleges*, *Hospitals*, and *Nunneries*, Learned to procure *Appropriations* to be made unto them. By means whereof, the several *Parishes* throughout *Christendom* began in short Time to grow destitute of Learned Teachers, and by this occasion more than by any other, fell from *Civility* to *Barbarism*, and from the *Knowledge* of true Religions, to gross *Ignorance* and meer *Superstition*.

But

But of all Kingdoms of the *Christian* World, I suppose that never any was so furcharged and ruined with this heavy burden as this Poor Kingdom of *Ireland* hath been, and is. For the more barbarous the People was, the more were they addicted to Superstition; and the more Superstitious, the more easy to be wrought upon in this kind. To instance in one for all: I have observed out of an old *Ledger Book* of the *Abbey* of *St. Thomas* near *Dublin* (a House of no very old Foundation) That in few Years after it was Erected, it had procured fifty nine *Church Livings* in part, or in whole, to be appropriated to their Uses. Neither may we doubt, but that *Kilmainim*, *Saint Mary's*, and other such Houses, which were in great number in and about *Dublin*, and other parts of that Kingdom, had their share alike. By means whereof it is come to pass, that a Man shall there find few Churches served by other than Poor Vicars and Stipendiary Curats, and those, for the most part, Men of such course stuff, as hardly can a Man say, whether such Men be less worthy of better maintenance, or such maintenance of better Men.

Regist.
Sancti
Thomas in le
Brening-
hams Tour
Dublin.

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I have been told that Doctor *Weston*, a Learned *Civilian*, and (not long since) a worthy Lord Chancellour of this Kingdom, pitying the miserable plight of this Poor Church, devised the means how to have all those Impropriations restored to their primer use again, and that he wrote a large Discourse to that effect, which he intended to send to her Majesty of happy Memory, but that Death prevented him; and (he dying) that Work aborted with him. I must confess, that the Line of my understanding is too short to reach to so deep a point of Learning: but well can I shew, what hath been done heretofore in the like Case, for the Benefit of the Church; and how (without wrong to any Man, and by a laudable due course of Law) there may and ought to be a competent maintenace raised unto every Minister, out of the Tythes belonging to his own Church; and that by the immediate Authority of the Bishop, notwithstanding the Appropriations as now they stand; and so the Poor Estate of this Church be made a great deal more tollerable than now it is. And this is the Argument of this short Discourse ensuing: an Argument which I know will seem harsh, and not
found

found well in the Ears of those Men who have hitherto lived in the quiet possession of the whole. But they are for the most part, Men of Honour and Wisdom, and such as can easily apprehend, That if happily my Love unto our Mother the *Church*, hath driven me into an Error, my Error cannot hurt them: And if I shall maintain a Truth, the Truth will defend both it self and me: In the one Case they need not, in the other they ought not; and therefore I hope and presume, that in Honour they will not be offended at me. As for the *Argument* it self, it will, in my poor understanding, be made clear and sufficiently proved to all Men of Indifferency and Wisdom, if I shall be able to make it appear. First, that by the Laws *Ecclesiastical*, which were in force before, and at the time of the Dissolution of Abbeyes in the Reign of *Hen. VIII.* The Bishops had full Power and Authority within their several Diocesses to allot, or cause to be allotted out of every Benefice, so much of the Tythes as might well serve for a fit Maintenance of the Minister, any Impropriation notwithstanding. And secondly, That the same *Laws* and *Canons* stand hitherto in full force and uncontrolled

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led by any Statute of either Kingdom.

To put hook to Corn therefore.
And first to make it clear, That by the course of the *Canon Laws*, and by the practice used in those days, the Bishops had such power over the *Monasteries*, and other such like Houses, while they were in their chiefeſt Ruff. It is to be obſerved, That it was the opinion which the World had conceived of the Piety, Charity, and Devotion of *Monks*, that firſt cauſed thoſe ample Revenues, both Temporal and Eccleſiaſtical to be caſt upon them. This opinion was the more confirmed in the minds of Men by their laudable beginnings ; for as the liberality of the Rich to them-wards, was very great ; ſo were alſo their hoſpitality in receiving Strangers, their Charity in redeeming Captives, their Devotion in relieving the Poor, and other Alms-deeds no leſs. As for the Benefices which were annexed to their houſes, and appropriated to their uſes, it is reported, that they uſed them, as if they uſed them not, and taking thereof a ſmall Penſion for themſelves, they left the reſt to the *Vicar*, which performed the daily Office in the *Church*. And no marvel : for had they appear'd in their own likenefs at the
firſt,

first, every Man had shut his Doors against them : But in process of time, as their Luxury, caused by their idleness, swallowed up their Devotion, so their Avarice, the natural begotten Daughter of their Luxury, quenched the fire of their Charity. Then began they to take the whole Fruits of those Benefices into their own hands, and to thrust the Curate to his pittance, not regarding how unworthy the Man were, so he would content himself with little wages. Insomuch, that the Popes themselves, who use to wink at small faults in their trusty Servants, grew offended at this their insatiable Avarice, fearing, and foreseeing, that in the end, it would turn to the discredit of the Papacy, whose Creatures they were, to the Ruin of the Parish-Churches, and Decay of Religion in all places where they came. The first which opposed himself against them, was *Pope Alexander* the third, about the Year of our Lord God 1170. He wrote to the *Monks* and other Regulars of the Church and Diocess of *York*, a certain *Decretal*, wherein having first blamed their covetous disposition in this kind, he addeth these words *Intelleximus quod in Ecclesiis ve-*
stri

c. Avaritia. Extra de Prebend. *stris de quibus certas Pensiones consuevistis percipere, portiones & antiquos redditus minorastis, quos nonnulli Clerici ecclesiarum ipsarum habuisse noscuntur: Ideoque mandamus, quatenus, si quas portiones, vel antiquos redditus Clericorum sine consensu Archiepiscopi vestri minuere præsumpsistis, ad integritatem pristinam revocetis.* From

whence that appeareth to be True which was said before: That in the beginning Monks, and others were wont to reserve to themselves a Pension onely out of those Churches which they held appropriated to their uses, leaving the gross of their Tythes which were

Panormit. ad. de c. Avaritia. extra de prebend.

the proper ancient Revenue of the Church, to the Vicars or other Curats of them. And so Panormitan understandeth this Decretal, and therefore summeth it in this manner: *Religiosi redditus Ecclesiarum ipsarum diminueri non possunt,*

Panormit. ibid.

respectu portionis quæ debetur Rectoribus seu Vicariis earundem; And a litle after he saith, that the Religious Men could not increafe their own Pension, *Nec possunt diminueri portionem solitam dari Rectoribus earundem Ecclesiarum:* Which I the rather alledge, because

Aufser. de c. 109.

A Learned Canonist in his 109. Decision will have it to be understood of the Convents of inferior Priories, rather

than of the Vicar's of Parish-Churches, being led into this Opinion, no doubt, by the word *Clericorum*; which yet, as *Suidas* and others testify, comprehendeth all sorts of *Priests* and *Deacons*, and all others which had taken upon them any degree of holy Orders, were they Secular, or were they Regular, and doth more properly signify a Minister of the Church, as one which is more peculiarly called *in sortem Domini*, than it doth a Monk or Fryar.

But of whomsoever it was meant, it seemeth that this Constitution served only for a warning piece, and did but random over the Monks for that present, without doing them any greater harm; for, *vana est omnis constitutio quæ contra facientibus pœnam non imponit*. And therefore as the Disease increaseth, so was the Remedy more and more inforc'd: wherefore the same *Alexander*, not long after, being duly informed of the ill behaviour of our *Monks* in this kind, and that, contrary to the old Custom, they suffer'd the poor Curats to take all the Pains, and not to partake of the Gains in any reasonable sort, wrote to the Bishop of *Worcester* in this manner. *De c. de Monachis qui vicarios Ecclesiarum parochia-*
nachis Extra de pre-
tium ita gravant, ut hospitalitatem tenere bend.

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non possint, eam providentiam habeas quod ad præsentationem eorum nullum recipias, nisi tantum ei de proventibus ecclesiæ coram te fuerit assignatum, unde jura Episcopalia possint persolvere; & congruam sustentationem habere.

For the better understanding of which *Constitution* it is to be noted, that in all those Churches which were appropriated to any *Monastery*, the *Monks*, as they were to receive the Fruits to their own uses, so were they to present their Vicar to the Bishop, by him to be canonically instituted to the cure of Souls; and were also to allow so much out of the Tythes as in the discretion of the Ordinary might seem enough to maintain the Vicar in a competent and a convenient manner, his Calling, Degree, and Quality consider'd, as also to discharge Procurations, and other Duties belonging to the Bishop to maintain Hospitality, and to support and defray all other Charges belonging to such a Benefice, as shall hereafter more fully be declared. But because the *Monks* would make them no other allowance than such as is now commonly made to our Hirelings here in *Ireland*. Therefore the Pope willed the Bishop (to whom the care of these things

things properly belonged) to reform this abuse, and to admit of any Clerk at their Presentation, unless the Monks would first make an Allowance of so much of the Tythes or other Profits, to the use of the Vicar; as would suffice for all the above named Charges, so saith *Panormitane*, *Innocentius*, *Rebuffus*, and other Writers, Expositors of the Canon Law. For albeit there were not in those days any Vicarages endowed (for this is a Term of our Common Laws, and unknown unto the Canon) yet was there ever a perpetual Vicar to be Resident in the Parish, not by Licence (as now is used) but by Canonical Institution from the Ordinary, at the Presentation of the Monks: unto which Institution the Bishop could not be compelled, unless the Monks had first set out a competent Allowance for the Vicar, as the Ordinary should think meet. And this was then thought to be a sufficient tie upon the Monks, to restrain their Avarice, and to compel them to make a more liberal Allowance for the Vicar: seeing that the Cure of Souls, which originally, or (as the *Canonists* speak) habitually resided in them, could not otherwise be supplied. And not long after the same *Alexander*,
B
sitting

*Panormit.
 Innocen.
 ad. D. C.
 de. Mona-
 chis Rebuff.
 de. congru.*

C. extir-
panda ex-
tra de pra-
bend.

sitting in the *Laterane Council*, issued forth a Canon of the same nature with his Decretal, but in Terms more general, and in form as followeth. *Extirpanda consuetudinis vitium in quibusdam partibus inolevit, quod scilicet parochialium Ecclesiarum patroni, & alia quadam personæ proventus ipsarum, sibi penitus vendicantes, Presbyteris earundem seruitiis deputatis relinquunt adeo exiguum portionem quod ex eâ nequeant congruè sustentari; nam (ut pro certo dicimus) in quibusdam Regionibus parochialis Presbyteri, pro sua sustentatione non obtinent, nisi quartam quartæ : i. e. sextam decimam decimarum. Cum igitur os bovis ligari non debeat triturantis; sed qui altari servit de altari vivere & debeat. Statuimus ut consuetudine qualibet Episcopi vel Patroni, vel cujlibet alterius non obstante, portio Presbyteris ipsis sufficiens assignetur.*

Panormi-
tan. ib.

This Canon (as *Panormitane* in his Commentaries upon the same faith) is properly to be understood of those Churches, *Quarum proprietas pertinet ad alium, i. e.* The property whereof belongeth to another, than the Vicar or Minister of the place; which may, or rather indeed must, be understood, either of Monasteries, to which they were appropriated; or of Dignities, to which they

they were annexed; or of Lay Persons, to whom they were given to be held in Fee, as they are now held by Proprietaries with us, especially in *France* thoroughout, and in some parts of *Germany*, where *Carolus Martellus* (as the *French* Histories report, 'and no less appeareth out of the Body of the Canon Law') after that Great and Glorious Battel near *Tours* upon the *Loire*, against the *Saracens*, wherein he slew of the Infidels three Hundred Threescore and fifteen Thousand Men, not having wherewith else to reward and content his Army for that days Service, gave all, or the greatest part of the Tythes to them in Fee for ever: yet in all these there was still a Vicar to be maintained, and a reasonable Allowance to be made for his Entertainment. But because all these in their several places took the whole Revenue of every Benefice unto themselves, not allotting to the Vicar above the sixteenth part of the whole Profits, by reason whereof sundry mischiefs grew unto the Church: every Man pleading a Custom, and that they had long used to pay no more. Therefore the Pope (who according to the course of those Times, was reputed to have Sovereign Authority in Cases of this Nature)

*Des Ser-
res en son
innetarie
de France.*

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ture) commanded all Bishops to root out this Evil Practice, and notwithstanding any Custom belonging to any Bishop, which held them peradventure united to his Table, or Patron which had them in Fee, or any other, as Monks, to whose Uses they were appropriated, they should reform this Abuse in themselves and others, within their several Jurisdictions, and cause a larger Proportion to be made unto every Priest or Vicar deputed to the Service of the Church.

There was after this another Decree published by Clement the III. in these words. *Sicut nobis tua fraternitas intimavit Monachi quidam & Canonici Regulares Ecclesias quæ ad præsentationem eorum pertinent propriis usibus deputare nituntur; nec volunt ad eas, cum vacaverint vocare personas, &c. admissos ita pensionibus onerantes, &c. Nolentes autem, ut status Ecclesiæ debitus & antiquus per insolentiam alicujus subvertatur. Mandamus quatenus nisi à jurisdictione tua exemptæ sint Ecclesiæ supradictæ, prædictos excessus studeas rationabiliter emendare: Et nisi prædictæ personæ infra tempus in Lateranensi Concilio constitutum, ad vacantes Ecclesias tibi personas idoneas præsentaverint, extunc tibi liceat, appellatione remotâ, in iisdem ordinare Rectores*

*C. Sicut ex-
ira de sup-
plem. neg-
lig. prelat.*

Rectores qui eis praesse noverint & pro-
desse.

This Constitution suffereth some Quarrel and Dispute upon sundry Points. But for our present purpose, *Petrus Rebuffus* saith, that it issued forth upon this occasion. *Alexander the III.* (as hath been said) had decreed, that a Bishop should not admit of the Presentee of the *Monks*, unless they would first assign a sufficient Portion of the Profits, for his Maintenance: whereupon the *Monks* would not present any Vicar at all; but either left their Churches unserved, or served them with poor mercenary Curates, such as we have Hundreds here in *Ireland*; and so the Church was worse served, and the Church-men worse provided for, than before. Whereupon this *Clement* by this Constitution ordained; That in case they did not provide sufficient Persons within the Time limited in the *Lateran Council*, which was of six Months, then the Bishop should collate by his own Authority, as in other Cases of Lapse and Devolution: Excepting always those *Monks*, which by special Privilege were exempted from his Jurisdiction; for with these the *Ordinary* was not permitted, but rather forbidden to deal.

Petrus Re-
buff. tract.
de congru-
port.

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But *Clement* the Fourth, about the Year of our Lord 1240. perceiving that the above mention'd Constitution of *Alexander* the Third had taken some good effect with the ordinary sort of *Monks*; and taken notice, That the exempt *Monks* which were immediately subject to the See of *Rome*, continued still to oppress their Vicars with intolerable Exactions, and to make them such small Allowances, that the poor Men were not able to live thereon, made a Decree, That the Constitution of *Alexander*, should also take place and be of force against the Exempt *Monks*: The words (after mention made of the Decree of *Alexander*, and of the great Abuses which grew by the Avarice of the privileged *Monks*) follow in this manner. *Nos itaque volentes super hoc salubre remedium adhiberi, presenti Decreto*

*... Suscepti,
de prebend.
in sexto.*

statuimus & mandamus Constitutionem hujusmodi, quod omnes patronos Ecclesiarum, Religiosos, tam exemptos quam non exemptos & alios, inviolabiliter observari, consuetudine contraria non obstante.

But all these Laws, though grounded upon great Reason, where of little force to prevail against a Mischief, which had spread it self so far, and rooted it self so deep, by Custom; and
the

the Redress whereof must pinch the Belly of the *Monk* : For what effect could a bare *Mandamus* work in a Case of this Nature, there being no Penalty inflicted upon the Offender?

Non Canis à corio facile absterrebitur uncto.
The *Templars* (for they were those which most offended in this kind, and which of all others were the principal occasion of these Decrees) were too covetous to obey for Conscience, and too mighty to be terrified with Words. And for my own part, I cannot see, what this was else, but either a Fear to display them ; or else a meer Mockery of the World, to command this thing to be done, and yet neither to inflict a Penalty upon the Offender, nor give Authority to the Reformer. I confess, that our Doctors and Interpreters of the *Canon Law*, reckon this for one of the Cases wherein the Ordinary had power given him over the privileged *Monks*: But neither were these such Men as would give their Beards for the Washing, neither would the Bishops venture upon such a point of Reformation, without a more expresse Warrant: seeing that Kings themselves had their Power in Suspect and Jealousie ; which also was in the end their Bane and Overthrow.

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At the last came *Clement* the V. a through Man, in whatsoever he undertook. This Pope in the Council of *Vi- enne* in *France*, made a Canon for the Reformation of this Abuse, more absolute than any of his Predecessors had made before him : For, having repeated the Constitutions of *Alexander* the III. and of *Clement* the IV. and finding them both to be imperfect, he adju- reth all Bishops : *Ne presentatum aliquem*

C. Ut con-
firmit. de
jurepatr.
in Cle-
ment.

per quamcunque personam Ecclesiasticam, jus presentandi habentem, ad aliquam Ecclesi- am admittant, nisi intra certum terminum competentem presentantibus per Diocesanos ipsos praesigendum fuerit coram iis congrua de proventibus Ecclesiae portio assignata.

And knowing well by the experience of Times past, what little effect a bare Command was like to take with this kind of Men; He further ordained, That in case the *Monks* should not make such Allowance as was fit for the Uses there expressed, within such reasonable time as the Ordinary should prefix, *Ut extunc Diocesani debeant presentatum ad- mittere, & in partem presentantium ad Di- ocesanos ipsos potestas assignationis hujusmo- di devolvatur.*

ibid.

By which Words, both the Presen- tee was secured in his Possession, as ta- king

king it by Collation from the Bishop, and the Right of assigning the Vicar's Portion taken from the *Monks*, and settled upon the Ordinary of the Diocese: And moreover, to arm him as well with Power to execute, as with Authority the command over the exempt and privileged *Monks*; In the end of the constitution he added these Words, *Ad que omnia integraliter adimplenda, nec non ad observationem debita assignationis per Dioecesanum faciendæ Religiosos prædictos, & alios quoslibet à Dioecesanis iisdem Ecclesiastica volumus censura compelli; non obstantibus exemptionibus, aut aliis quibuslibet privilegiis, consuetudinibus vel statutis, quæ circa præmissa vel eorum aliquod Religiosis ipsis, aut aliis, in nullo volumus suffragari.*

Ibid.

And this Authority granted to the Ordinary over the exempt *Monks*, is yet more clear by another Constitution of the same *Clement*, and in the same Council; wherein, because *Abbots* and other Regular Prelates were wont to hold their subordinate Priories and other Churches belonging to them, in their own hands; or otherwise to oppress them with Exactions, or happily not presenting any at all to the Bishop for Institution, therefore it was ordained,

ned, that in case they presented not
 C. Unico within six Months, *Diocesani locorum*
 de suppl. *in non exemptis sua, in exemptis verò Apo-*
 neglige. *negligentiam super hoc*
 Prælato. in *stolica auctoritate negligentiâ super hoc*
 Clement. *suppleant eorundem, Prioratus, Ecclesias, Ad-*
ministraciones, & Beneficia hujusmodi con-
ferendo.

And to the end the Ordinaries might
 have power in themselves, not only
 to supply their Negligence, bur also to
 restrain their Avarice : Therefore it
 followeth in the same Decree in this
 manner; *Eadem quoq; auctoritate Dioce-*
sani suffulti, nullo modo permittant quod
iidem Prelati, Prioratus, Ecclesias, Admi-
nistraciones aut Beneficia applicent mensis
suis, pensionesve novas iis imponant, aut
veteres augeant, sive quæ ipsis de novo im-
positæ sive auctæ solvantur.

The difference between this and
 the former Constitution is this. In the
 former, Bishops had power to make or
 cause to be made a sufficient Allowance
 to the Incumbent : In the latter, to see
 that the *Monks* laid no new Exactions,
 or imposed greater Pensions upon them :
 which difference arose from a diversifi-
 ty of Custom used among the *Monks*.
 For sometimes (and that was the more
 ancient and better Fashion) they left the
 Gross of the Tythes and other Profits

to be received by the Vicar, reserving to themselves only a Pension, to be payed out of the whole by the Vicar, which afterwards they sought immediately to increase : and sometime they set their own Proctor to take up the main Profits , and left only a part or Portion to the Vicar , which they sought continually to diminish : But in both cases the Bishops *Crosier* had the privileged *Monks* by the Leg, as well as he had the other.

This *Clement* made bolder with all sorts of *Monks*, than any Pope did before or after him. And as for the exempt Orders of them , whereas they were by Vertue of their Exemption immediately subject to the See of *Rome*, which could not from so far off, look well into their Dealings, he made them in this and certain other Cases, liable to the Bishops, of the several Diocese ; not as unto Ordinaries, but as to *Delegates* from the See of *Rome* for perpetuity , as here appeareth. And lastly, subjected them wholly in this manner to the Visitation and Rod of Correction of the Bishops, with a *Non obstante* of all their Exemptions or other Prerogatives and Privileges whatsoever.

*Platina in
vita Cle-
ment. 5.*

*Blason des
Armoiries.*

*Liv. De-
cad. 3. lib.
3.*

*En son plai-
doir pour
l'Univer-
sité contre
les Jé-
sui-
tes.*

As for the *Templars*, of whom I spake before, This also was that *Clement*, which, either fearing or envying their Greatness, by reason of their Wealth, Reputation in Wars, Alliance with Great Houses, and Populous Fraternities, which they had in every corner of every State and Kingdom, laid the Train to blow them up in an instant; and combining with *Philip* of *France*, and other Princes, caused them all to be surpris'd in a Moment, and to be made away; some by Massacre, and some by course of Law, laying to their charge Confederacy with the *Saracens*, Abnegation of Christ, secret Rites, strange Lusts, and other Crimes, whereof, some say, they were not Guilty. A *Mirroure* for the *Jesuits* to behold their Greatness, and to foresee their Ruin in. They are (as the Historian saith of *Elephants*) *anceps Bellua genus*, as likely to turn upon him that useth them, as to run upon them against whom they are used. *Henry. IV.* late King of the *French*, flattered them for fear, and could not thereby eschew their Plots. And it is not long since that *La Martelier*, the King's Attorney General in *Paris*, in the case between the University and them, delivered in open Court, That

That they are so fortified and cabled up with the Grants and Privileges of *Gregory XIV.* and other Popes, that now no Gun-shot or Thunder of Excommunication can make breach upon them; That sundry Popes of latter Time have sought to bring them into some Order, but have not been able to prevail. And lastly, that *Aquaviva*, their General, had at that present no less Power and Credit in *Rome* than the Pope himself. The saying is Old and True, *Quem quisque metuit perisse expetit*; and the Pope cannot long endure a Fellow-Pope in *Rome*.

But to return to our purpose. By that which hath been said, it may clearly appear, That the Bishop of every Diocese, what as Ordinary, what as a Legal and perpetual Delegate of the Pope, had full power in all cases of Appropriation, to compel the *Abbot* of what Sort, Order or Privilege soever, to make a convenient Allowance out of the Tythes and other Profits of every Benefice, for the sufficient and decent Maintenance of the Curate: so that had these Laws been as carefully put in Ure, as they were in Writing, the Avarice of the *Monks* had been restrained, and the Curates better provided for. But

Quid

Quid leges, sine moribus? The miserable Event and Calamity of all Churches sheweth that the Gate being once set open to their Avarice, it was too late to shut the Wicket: yet the Popes of succeeding Times were not altogether negligent in seconding this Ordinance of their Predecessors. For *Petrus Rebuffus* said, That in those Appropriations which pass immediately from the See of Rome, this Clause, or the like, is always added in the end. *Reservata tamen de fructibus, & proventibus hujusmodi pro uno vel duobus Vicariis perpetuis Canonice instituendis congruâ portione, ex qua iidem vicarii possint de cætero sustentari, jura Episcopalia solvere, & alia incumbencia onera commodè supportare, non obstantibus exemptionibus, privilegiis, aut aliis quibuscunque.*

De congrua portio. nu. 103.

In Prax. Benefic. aria: tit. de. Rescript. Unio.

And again. *Reservantes tamen de ipsius fructibus, & proventibus Beneficiorum ipsorum, si Ecclesie parochiales fuerint, pro singulis perpetuis vicariis in singulis eisdem parochialibus Ecclesiis instituendis, portiones ex quibus dicti vicarii congruè sustentari valeant, & alia sibi incumbencia onera supportare.*

Also in all Confirmations granted from that See, of Appropriations made by inferiour Bishops, the same Clause or the

the like in effect was ever used, so saith
Speculator. In confirmatione de Ecclesiis in
propriis usus retinendis ponitur hæc Clau-
fula. Ita tamen, quod perpetuo vicario qui
pro tempore serviet in eadem, ad sustentatio-
nem suam, & subeunda Episcopalia & Eccle-
sia onera congrua portio de ipsius proventi-
bus relinquatur.

By which Clauses of Reservation, it
 is manifest, that the Popes meaning was,
 to have the Vicar first provided for,
 and to give the Surplusage only to the
 Monks, as the same *Rebuffus* saith.
 And *Panormitan* also affirmeth, That
 those which have Churches granted
 unto them in *propriis usus*, cannot by
 Vertue thereof challenge the whole
 Fruits unto themselves, *sed redditus tan-*
tum superfluos, detracta prius congruâ por-
tione pro Vicario seu Rectore ibidem insti-
tuendo. So that if there be sufficiency
 for both, each may have a share: but if
 one must go without, in all reason, the
 daily Waiter ought to be first provided
 for. And because there are many things
 ordained in the Canon Law which yet are
 not received for Canons, nor obeyed as
 Laws in all places, therefore will I shew
 unto the World, that the Practice of our
 Bishops of *England* and *Ireland* in for-
 mer times agreed with this very Pre-
 script

script and Rule of the Canon Law: For I have seen the Extract of a certain Impropriation bearing Date *Anno 1387.* made by the Bishop of Sarum, of the Rectory of Erchford to the Abess and Convent of Saint Mary's in the City of Winchester, running in this manner; *Salvâ portione pro Vicario dictæ Ecclesiæ hæc tennus assignata, & per nos propter ejus exilitatem & insufficientiam, & alias causas legitimas moderatè augmentanda, præstatam Ecclesiam Parochialem de Erchford, &c.*

And in the end thereof. *Hac autem omnia & singula statuimus, & finaliter definimus salvâ nobis & successoribus nostris liberâ facultate præmissa.*

Likewise I have seen another of the Rectory of Shapwick in the County of Dorset, made by the Bishop of Sarum to the King's Chappel in Winburn, Minister of the same County, with this Clause; *Reservantes tamen nobis & successoribus nostris liberam potestatem portiones dictæ Vicariæ quoties necessarium, vel opportunum esse videbitur diminuendi, & si oportuerit, augmentandi, supplendi, immutandi, &c.*

Also of the Rectory of Coleshill in the County of Berks, with this Clause; *Reservata prius de dictis fructibus & proventibus ad arbitrium nostrum vel successorum nostrorum*

noſtrorum pro perpetuo Vicario ibidem Domino ſervituro, congruâ portione, ex qua idem vicarius commodè valeat ſuſtentari, jura Episcopalia ſolvere, & alia incumben- tia onera ſupportare.

And for Ireland; I have ſeen a Grant made by the Biſhop of Kildare of the Rectory of Cloncurr and ſundry other Churches of the ſame Dioceſs, to the Abbey of Saint Thomas near Dublin, by way of Appropriation; in the end whereof I find always this Clause added, *Salvâ ſuſtentione Vicari- orum eiſdem Eccleſiis deſervientium.* And without this or the like Clause of ſaving and reſerving to the Vicar, have I not ſeen any Union or Appropriation made in either Kingdom.

And to ſhew yet further, that our Biſhops have not only in Words reſer- ved to themſelves this Power, but alſo indeed Executed the ſame upon occaſi- on, and that without any former Reſer- vation, and only in pure right of Law; I ſhall deſire credit in reporting what I have ſeen in an old Ledger Book belon- ging to the Abbey of Saint Thomas near Dublin, and is to be found in Bre- *Reiſtrum* *St. Thoma* *in le Bre-* *minghams* *Tour Dub-* *lin.* *minghams* *Tour Dub-* *lin.* (among other Records) there is one fol. 50. which beareth this Title. *Ordinatio*

C

portionum

portionum Vicariorum in Midia. By the Tenor whereof, and by that which followeth it appeareth, that upon controversie moved between the Bishop of *Meath* on the one Party, and the *Abbot* and *Convent* of *Saint Thomas* of *Dublin* on the other, which held many Benefices in that Diocess, and made small Allowance to the Curates, the Pope directed his Commission to certain Delegates in *Ireland*, to hear and determine the Case between them. The Bishop Alledged among other things, that whereas they by Law could not serve the Cure of those Parishes themselves, yet they would not present their Vicars for Institution, nor suffer him as Ordinary to tax the Vicarages. The *Monks* in their Answer replied, that those Churches were passed to them *pleno jure*, without any such Reservation of Taxing by the Bishop, and that they had so held them time out of mind, with the Knowledge, and without Impeachment of the Bishop, and thereupon pleaded a Prescription in barr of the Bishops Jurisdiction. Notwithstanding all which, the Delegates ordered, that the Institution of Vicars in those several Churches, and the Tax of their Allowance, should be left

ia. By the left to the Discretion and Arbitrement
 which fol- of the Bishop: who thereupon (the
 upon con- Abbot submitting himself and his Con-
 the Bishop vent to the Order) proceeded in this
 y, and the manner. *Ordinamus quod in Ecclesia de*
 t Thomas of *Rathoth ordinetur vicarius , cui vicaria*
 held many *assignetur , ad aestimationem quindecim Mar-*
 and made *carum.* And so goeth forward , crea-
 Curates, the ting many other perpetual Vicars in
 ion to cer- several Parish Churches, and making
 o hear and them certain Allowances by way of
 een them. Tax , which remain unto this day:
 mong other Neither do I doubt but that upon
 ey by Law diligent search made into such like *Led-*
 those Pari- *ger Books* of other dissolved Houses ma-
 ould not pre- ny more Examples and Precedents of
 tution, nor like nature might be found. But by
 x the Vica- that which hath been said it may suf-
 Answer re- ficiently appear , that this power of
 s were pas- ordaining Vicars in these appropriated
 out any such Benefices, and Taxing the Rates of their
 the Bishop, Allowances, is so fast nail'd to the Bi-
 em time out shops See , and so inherent in his Per-
 vledge, and son, that no Privilege; no Exemption;
 the Bishop, no Prescription , is able to dispossess
 Prescription him of it.
 Jurisdiction. And as this Right of Ordaining Vi-
 , the Dele- cars in appropriated Churches, and Tax-
 nstitution of ing their Allowances out of the Fruits,
 urches, and is bodily settled in the Bishop, so the
 e, should be Right of claiming and receiving the
 left same

same is so deeply rooted in the Person of the Vicar, that nothing but Injustice and Sacrilege can take it from him. For howsoever this falleth out otherwise in Practice (such was the Corruption of former Times, such is of ours) yet in Law, this is an infallible, and unmoveable Foundation, that notwithstanding all Grants, Duties, Rights, Privileges, or other Devises whatsoever, yet the Church is still to be kept in *statu quo prius*. And therefore Clement the III. giveth this as a reason of his De-

D. C. sicut de suppl. neglig. Prelatorum. decree above mention'd. *Nolentes autem ut status Ecclesie antiquus & debitus per insolentiam alicujus subvertatur Mandamus, &c.* And Innocentius giveth this as a Lesson. *Episcopus nunquam debet con-*

Innoce. ad D. C. de monachis extra de prabend. sentire quod redditus soliti Clericorum minorer: & nisi ita provideatur, quod hospitalitatem servare possint, & de juribus Episcopalis respondere. And therefore a-

Rebuff. de congrua portion. nu. 104. nother Learned Author also saith; *Non potest Episcopus, vel alius donare unius Ecclesie temporalia Monasterio, vel alteri in destructionem & prejudicium, prima Ecclesie; nec unum altare discooperire, ut alterum coöperiat.*

And to make this clear by particular Cases in the Law: *Commendams* (which, though not utterly and in all cases

cases to be condemned, yet *Rebuffus*, seeing the great excess and abuse of them in the place where he lived, calleth *Perniciem & exitium totius Reipublice Christianae*, because they are never granted, but with some nuisance to the Church) were anciently wont to pass with this Clause. *Volumus autem quod propter hujusmodi Commendam, divinus cultus & solitus Monachorum & Ministrorum, numerus in dicto Monasterio nullatenus minuat, sed illius & illorum congruè supportentur onera consueta; de residuis vero Monasterii fructibus & redditibus & proventibus dispendere & ordinare libere & licite valeas, &c.*

*Rebuff.
ibid.*

The like to be understood, and much rather of the Vicar, in case a single Benefice were so granted. For in his case (as *Panormitan* reporteth) though no such Clause were expressed in favour of him; yet the Law of a *Commendam* will give the *Commendatary* no more, than the Remainder of the Fruits after the Vicar's Allowance made, and other necessary Charges born, and Duties paid: whereof he maketh bold to put the Bishops and Cardinals in mind; and joining these *Commendataries* with *Proprietaries*, saith, that neither of them both *Potest immutare statum Ecclesiae; unde debent facere deservire, per Clericos seu numerum*

*Panormit.
ad d. c. de
monachis.*

merum Clericorum consuetum, & hospitalitatem ibi more solito servare. Again, the Bishop or other Visitor is so rooted in Law for the receiving of his Procurations due for Visitation, that no Custom, no Grant of Predecessor, nor ought else, but a Privilege from the Pope, which was a Transcendent above all Right and Reason, could take it from him; yet in case that by any occasion the Profits of the Benefice come to be diminished, the Bishop must either in part or in whole forego them, and take as the Church is able to spare them. *Et*

Ludovic.
Rom. Con-
fi.

pro modo facultatum Ecclesie (as *Ludovicus Romanus* saith.) And *Hostiensis* affirmeth, that in this case the Visitor must bear his own Charges: *Est enim* (saith he) *de mente & verbis juris, quod Ecclesia ultra posse non gravetur* (as *Panormitan* alledgeth him.) And albeit they both spake in case, where more Visitors fall upon the Diocese in the same Year; and all look for Procurations: yet *Petrus Anchoranus* saith, that it is the same, *Si vel unus procurandus fuerit: Ideo enim* (saith the same Author) *bona dignitatis sue Episcopo sunt attributa.*

C. 1. ex-
tra de cen-
sibus.

Moreover a Patron which Foundeth and Endoweth a Church may reserve unto himself a Yearly Pension

to

to be paid out of the same Endowment : Notwithstanding, if by any Accident the other Revenues of the Church fall out to be so short that they cannot conveniently and competently ^{Rebuff. de pacif. poss. num.} Maintain the Incumbent, the Patron ^{128.} must in this case forbear his Right, not as if it were now taken from him, but as if it had been *tacita conditio*, and so to be understood from the beginning. And therefore *Panormitan* saith, That that power of reserving a Pension upon the Endowment of a Benefice must be understood, *Quando fructus sunt abundantes, & sufficientes Clerico.*

The like is to be said, If a Bishop ^{vid. Rebuff. Tract. de pacif. poss. nu. 134. & nu. 141.} should reserve a Pension out of a fat and wealthy Benefice to the use of a Student or other Clark, (a custom much used heretofore in *England*, but taken away afterwards by Act of Parliament) For if either by Error at the first, the Incumbent was not able to maintain himself of that which did remain, the Pension was so great, or afterwards the ^{Ludovic. Rom. con. fil. 369.} Remainder grew to be so little, that the Pension was either to be abated, or taken clean away, to the end the Incumbent might be still provided for.

And lastly, to instance in a Case or two concerning these very *Monks*, of

The poor Vicar's Plea

whom we speak. The Pope was wont heretofore to Grant large Privileges to *Monks* and *Monasteries* concerning Non-Payment of Tythes : so long as they benefitted themselves without enormous hurt unto the Churches, it was tolerated : But if they either begged or bought the whole or greatest part of the Parish, and so their Privilege *De non decimando*, grew over-hurtful to the Parson, the *Monks* were forced to grow of themselves to a new Composition with the Incumbent, and to disclaim the Rigour of their Privilege, *Revocatur enim privilegium, si ex*
Extra de post facto incipit enormiter esse nocivum,
privileg. faith the Law.

Neither were the *Popes* less prodigal in granting them Privileges, *De percipiendis Decimis*, whereby they were authorised to receive the Tythes of Parishes unto themselves without any Appropriation or Union of the Churches : yet in this case also *Alexander* the IV. published a Decree of all such Privileges in this manner. *Ubi autem per hujus-*
modi Concessionem decimarum, parochiales Ec-
clesias adeo gravari contingit, quod earum
Rectores de ipsarum Reditibus congrue
sustentari, & commode jura Episcopalia ex-
hibere non possint ; provideatur per Locorum
Or-

*C. Statut.
de decimis
in sexto.*

was wont
Privileges
concerning
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Churches:
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ch Privile-
m per hujus-
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quod earum
us congrue
iscopalia ex-
er Locorum
Or-

*Ordinariis, & ordinetur taliter, quod iisdem
Rectoribus tantum de illarum relinquatur
proventibus, quod exinde competentem su-
stentationem habeant, & Episcopalia jura
solvere valeant, aliaque onera debita suppor-
tare.*

If then the Law be so careful of the Curate and actual Incumbent, or day-ly Minister of the Church, as to revoke Privileges, to take away Pensions, to debarr the Patron of his Right, and to lessen the Profits of Commendataries, rather than he shall want; much more then may it be thought, that it will not suffer the *Monk*, who was never compared to better than a Drone, by Vertue of an Appropriation, to eat up the sweet of the Bee, that is, the necessary Maintenance of the labouring Priest and Minister of the Gospel. And if the Reverend Bishops, which are *de jure divino*, suffer their own hands to be tied, in receiving their Duties from the Curate, where it cannot well be spared, much more ought the *Monk*, who was never a Man of God's making, but a meer Creature of the Pope, who also may unmake them all again at his pleasure, (as *Felinus* saith) be forced to make him a more liberal Allowance out of that, which of Right wholly belongeth to him,

for

Concil. To-
let. 9. c. 5.
2. q. 2. c.
Bona Rei
consultum.

D. C. 5.
Concil. To-
let.

for his daily Service in the Church. For in this and all other cases of this sort, where the Profits of the Curate are impaired, and diverted another way, the Rule prescribed in the IX. Council of Toledo is to be observed, namely, *Ut hac temperamenti equitas observetur, quod cui tribuit, competens subsidium conferat, cui tollit, gravia damna non infligat.* Neither shall it be amiss, by the way, to let the World know what this Council in those Days thought to be *Competens subsidium*, i. e. a competent Relief unto the poor Monks, and what to be, *grave damnum*, unto the Churches. The words of the Council are these, *Quisquis Episcoporum in parochiâ suâ Monasterium construere forte voluerit, & hoc ex rebus Ecclesiæ, cui præsidet ditare decreverit, non amplius quam quinquagesimam partem dare debet, ut hac temperamenti, &c. ut supra.*

In those Days a Pension of the fiftieth part unto the Monks was thought a burthen heavy enough to be laid upon the Churches, whereas now a-days, and since those Appropriations came up, scanty is the fifteenth part left for the Ministers of the Churches; so far are we gone from the Temper by them prescribed; which Temper had it been ob-

urch. For
 this fort,
 ate are im-
 r way, the
 Council of
 amely, *Ue*
vetur, quod
m conferat,
fligat. Nei-
 e way, to
 his Council
 be Compe-
 tent Relief
 hat to be,
 rches. The
 hese, *Quis-*
uâ Monaste-
& hoc ex
e decreverit,
nam partem
nti, &c. ut
 of the fifti-
 as thought
 be laid up-
 now a-days,
 tions came
 art left for
 hes; so far
 er by them
 had it been
 ob-

observed heretofore in this Realm of
Ireland, neither should there have been
 so many Abbies here erected with the
 Ruin of the Churches, nor should the
Monks have spent that in Luxury which
 should have served for the Necessity of
 the Preacher. But every Church should
 have been provided, if not of a rich, yet
 of a convenient Maintenance, and conse-
 quently, if not of an excellent, yet of a
 reasonably learned Minister.

And to go forward with the course
 of the Ecclesiastical Law in this point,
 as it was in force at the time of the Dis-
 solution, and to shew how careful the
 Popes and Prelates of those days were,
 to mend a fault which themselves had
 made, and to dawb up that gaping and
 irreparable Breach which they had
 made upon the Church, in appropriat-
 ing her Livings and Revenues to the
Monks, by providing a perpetual Com-
 petency for the Vicar, It is further to
 be noted, that if this Allowance were
 once made, and yet afterwards came to
 be impaired, and less than enough, it
 was still made good again unto him
 out of the Appropriation. As for Ex-
 ample, if the Vicar's part consisted in a
 certain kind, as in Hay; and the Owner
 should afterwards convert the Ground to
 Tillage:

Tillage: If it were to arise out of certain Mens Lands, and they should afterwards plead and prove a Privilege *de non decimando*: If by War or any other occasion it came to be extinct: For in all these Cases, the Vicar is to sue to the Ordinary for a new Allowance, and he is to make it out of the Remainder of the Fruits in the Abbot's hand, so saith *Felinus*, *Bonis deperditis Vicario assignatis, Judex ei de alijs providere debet.* And *Rebuffus*. *Si portio fuit destructa & extincta bello, vel alio casu, & adhuc fructus sufficientes remanent apud Rectorem vel Patronum, eo casu adhuc iterum petenda est congrua portio instar illius qui legitimam consumpsit, ut de filio prodigo est in Evangelio.*

*De offic.
Vicar.*

*De congr.
part.*

*Felinus ad
C. G. Vi-
carius ex-
tra de fide
Instru-
ment.*

Whence it is also that *Panormitan*, *Felinus*, and other *Canonists*, deliver this for a ruled Case in Law, That if any shall implead the Vicar for any part of his Portion, the Proprietary or Rector, may also come in for his Interest, by way of Assistance unto the Vicar, *Ratione praejudicii quod sibi ex contrario eventu litis possit irrogari, cum perditis bonis Vicarij, oporteret provideri de alijs bonis Ecclesiae.*

And I shewed before, that our Bishops in England and Ireland, were wont to reserve unto themselves a power of encreasing or altering the Vicar's Portion at their

their own Discretion. Neither was it material whether this Competency being provided for the Vicar, there were ought or nought remaining to the Proprietary or *Monk*: for if the whole Tythes would serve but for the Vicar, the *Monk* was to go without: for from the beginning the Tythes belonged to the Church, whose immediate Pastor the Vicar is; neither were they given but for the daily Office in the Church, which Office the Vicar doth; and if nothing be left unto the Proprietary, yet are his Wages answerable to his Pains. And as one saith, *Vicarius agit de damno vitando, Monasterium verò de lucro captando; ideò præfertur Ecclesia vicarij, monasterio.* And reason good; for the Vicar is the labouring Ox which treadeth out the Corn, whose mouth must not be muffled, as saith the Law of God.

And for the further clearing of this whole point, it is to be observed, that whatsoever hath hitherto been spoken concerning the Vicar, it is to be understood not of a *Temporary*, but of a perpetual Vicar, which is a Person founded in Law, without a new Act of Parliament: and is in the Canon Law, and by the Canonists called *Parochialis Presbyter, Parochialis Ecclesie Sacerdos, Rector*

Et Ecclesie, *Perpetuus Ecclesie Presbyter, vel Vicarius*, not to be appointed by the *Abbot*, and Licensed by the Bishop to say Service; but to be presented by the Patron, what ever he be, and to receive Canonical *Institution* at the hands of the Ordinary of the place. And as the Bishop is not only authoris'd, but also commanded, and *sub obtestatione divini Judicii* by the Law required, not to admit of a Presentee, unless the Presenter shall first assign and lay forth a legal Portion of the Profits for his Maintenance, and may *ex officio* proceed so often as the cause shall so require. So also hath the Vicar his Action to implead the Parson, if either it was not assigned from the beginning, or if it fall out afterwards to be insufficient, and the Patron refuse to supply, and to make it good again unto him. And therefore

Hostien. in Hostiensis, the Question being put, *Quod summ. de jus habeat Vicarius in Ecclesia?* among *offic. Vicar.* many other, putteth this for one. *Item habet jus petendi congruam portionem de redditibus Ecclesie, cui servit si minus idoneam habeat.* The Action which he is to bring is called, *Actio secundum Canonem*; and answereth to that which we call and *Action upon the Statute*; and is then brought, when a Man is privately interess'd in
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the Breach of a *Canon*, and yet hath no special Action given him thereby. And this Action lieth, Whether the Patron or other Receiver of Tythes, be exempt or not exempt, Religious or Secular, *Monk* or *Canon*, Clerk or Laick: For in this case there is no exception: but whosoever receiveth the Profits is lyable to the Action. And therefore I will say as a learned *Canonist* hath said before me, *Cum in hoc casu neminem Inveniam privilegiatum, illi dare privilegium non est mihi liberum. Et ideo omnes tenentur ad hanc Portionem qui decimas & Beneficii fructus recipiunt.*

And this Action is to be brought before the Bishop or Ordinary of the Place, as one that standeth principally charged with this Duty. Notwithstanding in *France* their high *Sedentary* Courts of Parliament, though Temporal, yet use to lend a helping hand unto the Vicar in this case, and are often sued unto. The reason is, because the Bishops stand as much in fear in those places of offending those mighty *Societies*, as ours do of *Prohibition* and *Præmunire*. And therefore *Johannes Andræas* saith merrily of them: That,

Cum sint cornuti, non audent cornibus uti.

*Johan.
Andræas,
ad c. fin. extra,
de Rebus Eccle-
siæ non ali-
enand.*

Mean-

Meaning, that they dare not use that power which the Law giveth them in this case: yet the Ecclesiastical Judges use to repine at this usurpation of the Parliaments: And the Popes, as well to supply the negligence of the Bishops, as to give the Parliament no occasion to trespass upon their Jurisdiction; use to give in charge to those which are called *Conservatores Apostolici*, in special to take knowledge of the Vicar's Portion. To these their Vicars, if either their Allowance be in it self too small, or overburthened with Pensions, and other payments, use to resort, and by them have they Remedy against the *Monks* and others. And for proof hereof *Petrus Rebuffus* saith; That himself hath been often called to Council in the Assignment of these Portions for the Vicar: which could not be, unless the case were clear, and void of all doubt in Law: for upon the least Doubt or Demurr in Law that could arise, the *Conservator's* hands were closed, and they forbidden to proceed, as Men appointed for Redress only of such apparent Injuries as these were. Happy Vicars, where so many Men of greatest place strive together, who shall be most forward to do them Right.

There

There is also with us some contention about them and their Livings, but it is not who shall do them good.

But what do I stand, either to maintain the right, or to lament the wrong of our poor *Vicars*, or to declare the Jurisdiction of the *Ordinary* in these cases by Proofs and Arguments taken out of the *Canon Law*, seeing that nothing that hitherto been said which hath not been long since acknowledged, approved, and confirmed by the *Common Law* of these Kingdoms? To let pass many others, and to instance in one for all, There is a Case reported *Term. Michael. An. 2. H. IV. fol. 12. Cas. 44.* which seemeth a Brief of all that hitherto hath been said, and is as followeth.

Termo Michael. An. 1. H. 4. fol. 103. Cas. 44.

‘The Abbey of *Saltaſh* in the County of
‘*Devon*, was appropriated to the College
‘of *Windſor*. And upon the Appropriati-
‘on the Vicar that then was, endowed
‘with certain Houses for his entertain-
‘ment, to the value of 20 *l. per ann.* by the
‘Ordinary, and by all those which had
‘interest therein. And moreover took
‘an Oath, and was also bound in a great
‘sum of Money before the Collector of
‘the Pope in *England* with the assent of
‘the Ordinary, to be paid into the Cham-

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‘ ber of the Pope, upon condition that
 ‘ he should hold himself content with the
 ‘ said Endowment, and should never Will
 ‘ the contrary, neither should procure any
 ‘ thing, or do any thing against the said
 ‘ endowment, or to the disanulling
 ‘ thereof: nor should ever claim any
 ‘ more to belong to his Vicarage, but
 ‘ should hold himself to the payment of
 ‘ the said Endowment. And if he fail-
 ‘ ed in the said Conditions, or in any
 ‘ one of them, that then he should incur
 ‘ the pain of the said sum to the Cham-
 ‘ ber of the Pope.

‘ Afterwards came the Dean of the
 ‘ said College into the King’s Chance-
 ‘ ry, and declared this matter, and fur-
 ‘ ther averred, that the said Vicar had
 ‘ claimed another Endowment, contra-
 ‘ ry to the Endowment made by the Or-
 ‘ dinary of the place, and contrary to his
 ‘ Oath. And that the Vicar upon sug-
 ‘ gestion made, that the Pleas of Cove-
 ‘ nants and Debts arising of Contracts
 ‘ within the Realm belonged to the Kings
 ‘ Court, had purchased a Prohibition
 ‘ directed to the Collector. And here-
 ‘ upon as well the Collector as the Dean
 ‘ prayed a Consultation.

Here we see, first, that not only the
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propriation, but also the Endowment thereof belongeth to the Ordinary of the place. Secondly, that the *Vicar* bringeth his Action against the Dean, which was the proprietary of the Tithes, by vertue of the *Impropriation*. Thirdly, that he brought this Action for a second *Taxation*, as either pretending the first to have been too little from the beginning; or shewing that it had been abated or diminished afterward; whether by chance of Fire, or falling of Rents or lack of Tenants, or by some other accident: And lastly, that this Action was brought before the *Ordinary* of the place: For whereupon was the Consultation prayed, but upon a Prohibition granted out of the King's Court? whereupon was the Prohibition granted but upon the Deans Action, brought before the Collector of the Pope? And whereupon should the *Vicar* be sued upon breach of Oath and Bond before the Collector, but upon his claim of a new *Taxation* before him, which made the old *i. e.* before the Bishop.

Neither can it be said that this is a Case, and not a Judgment, and therefore proveth nothing. For the Case being so put, there was no exception taken; neither against the *Vicar*, that he

had not, *personam standi in indicio*; neither yet against the Bishop, that he had not jurisdiction in these cases, (for these exceptions had been peremptory if they had been true) neither yet that the Endowment once made, it ought not afterward to be increased in favour of the *Vicar*. Only the Dean granting all this, sued the poor *Vicar* before the Collector for breach of *Oath*, and forfeiture of his *Bond*: For this was ever the policy of that kind of Men, to secure themselves both from the poor *Vicars* lawful claim, and from the ordinary Jurisdiction of the Bishop, by some collateral and indirect security. As for example, in a Case before mentioned between the Bishop of *Meath* and the Abbot of *St. Thomas*. The Abbot got the Bishop to be bound in a Bond of a thousand Pounds, never after that to trouble the *Monks* with a new *Taxation*. And here we see the *Vicar* tyed, not only in a Bond of a great Sum, but also by a solemn Oath, never afterwards to claim a new Endowment: which needed not, had not the Laws of the Land agreed with the Laws of the Church in favour of the distressed *Vicar*. But the Devil, I think, was in those Men, only to ruin the Church and Christian Religion by them.

But

But to make these points yet more apparent according to the course of the Common Law. It may not be forgotten, That anciently in these Kingdoms, the Vicars right was much challenged in the Kings Courts for bringing Actions in his own name, especially against the Parson. But the Parliament (as it seemed) being informed of this mischief, and seeing the misery which the Vicars fell into hereby, provided for them by a Statute *Anno 14. Edw. 3. cap. 17.* wherein it is ordained, that Vicars may bring their Writs of *juris utrum*, or recover by any other Writ as well as the Parson might. And this was it which not long after, namely *Anno 40.* of the same King in a Case reported *Term. Trinitat. Cas. 15. fol. 28.* *Fincheden* said, that it was true, that in ancient times the opinion was, *That the Vicar should not have action against the Parson*: but, *I find* (saith he) *that this is changed for the better*: which (as *Brooke* saith) *Nemo dedixit: i. e.* no Man gainsaid. And consequently it was then taken to be clear in Law. And as touching the Jurisdiction of the Ordinary in providing for the Vicars maintenance, *Belknapp* in debating the same Case useth these words: 'We have these 'Lands assigned to the Vicar by the as-

*An. 14.**Edw. 3.**cap. 17.**Term. Tri-**nit. cas. 15.**fol. 38.**Abridg-**ment. tit.**Vicars.*

' sent of the Ordinary: And you will
 ' grant that the Ordinary may encrease
 ' or diminish his portion, having regard
 ' unto the charge which belongeth unto
 ' him: which *Fincheden* there granteth
 to be true, in case the Vicars Estate be-
 come weak and feeble: And we desire
 no more. And in this Case, although
 the Parson or Proprietary be said to be
 interess'd; yet is all the power and right
 of assigning the Endowment in the Bi-
 shops hand. For (as *Belknapp* there saith)
 ' The Ordinary shall endow, and the
 ' Parson shall do nothing but consent,
 ' because the thing it self is meerly spi-
 ' ritual. In which case, if the Parson
 ' will not consent, yet the Bishop goeth
 on without him. And if (perchance)
 he shall exceed in his tax, the Proprieta-
 ry is left to his Appeal, *ab excessiva taxa-*
zione, by the course of the Canon Law,
 as *Rebuffus* saith: But other remedy he
 hath none, no not at the Common Law,
 as *Belknapp* there affirmeth. And it is
 further to be remembred, that this pow-
 er of assigning the Vicar's portion, even
 out of the Lands and principal posses-
 sions of the *Abbot*, as Parson of the place,
 was ever held so proper to the Bishop,
 that he might do it *sans Congè, sans li-*
cence du Roy: i. e. without the leave or li-
 cence

cence of the King, and is there affirmed :
And therefore shall not now need a new
Act of Parliament for his Warrant, but
only the Hand of Justice, for his assistance
in the execution of his Right.

It should seem, that about the times
of *Edw. III. Rich. II. and Hen. the IV.*
which was an age of horrible confusi-
on, by reason of those bloody Wars
wherein the Crown of *England* was then
entangled both at home and abroad ; the
greater fish of the Clergy went about to
eat up the lesser. My reason is, because
in those days there were so many solemn
Laws made to maintain the one in his
Right, and to repress the Injury of the
other. For ill customs commonly give
occasion to make good Laws. In the
time of *Edward the 3.* (as hath been for-
merly said) there was a Statute made,
to enable the Vicar to bring his Action
against the Abbot, who detained the
Glebe or other Duties from him. In the
time of *Richard II. Anno 15.* a Statute Stat. An.
15. Rich.
was made, that in every Licence from
thenceforth to be made out of *Chancery* ^{II.}
of the Appropriations of any Parish
Church, it should expressly be contained
and comprised, that the *Diocesan* of the
place, upon the Appropriation of such
Churches, should ordain, according to

4. Hen.
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the valuation of such Churches, a convenient Summ of Money to be paid and distributed yearly out of the Fruits and profits of the same Churches, by those which have them in proper use, and by their Successors, to the poor Parochians of the said Churches, in aid of their sustentance and living forever. And also that the Vicar should be well and sufficiently endowed. cap. 6. Also by a Statute of 4. Hen. IV. It was ordained, that the Statute of 15. Rich. II. should be kept and put in execution. And that Appropriations made since that Statute, contrary thereunto, should be reformed by a certain time, or else be void: And that from thenceforth in every Church so appropriated, a Secular Person should be ordained a Vicar perpetual, canonically instituted, and inducted in the same, and convenably endowed by the discretion of the Ordinary, to do divine Service, and to inform the People, and to keep hospitality there, with other conditions and limitations there expressed.

Here we see first, that although the Parliament was careful to have the Vicar provided for; yet it left the disposition of these things unto the Bishop of the Diocess. Secondly, in case the Bishop was defective in his first Assignment of the

the Vicar's portion, he was enjoined to reform it, and make it better by a time prefixed; otherwise his act of Appropriation to be void. That the measure of the Endowment was to be convenably, sufficiently, and well endowed. That there was no other Rule of this measure, but the discretion of the Bishop, for the uses mentioned in the Law. That this Vicar must be secular, perpetual, canonically instituted and inducted, all suitable to that which hath been formerly declared out of the Canon Law. The fruit of all which Statutes is, that throughout the Church of *England* a Man shall scarce find an Impropriation without a Vicarage, or a Vicar without a reasonable good allowance. And lastly we find, that besides this reasonable and sufficient allowance due unto the Vicar, the Statute most wisely and charitably provideth that the *Ordinary* shall ordain a convenient proportion of Money, to be distributed yearly among the poor of the Parish, meaning (as it seemeth) that every Bird taking his own Feather, and every Man his due, the *Abbot* should be reduced to that small Pension which was only due unto him at the beginning, by the Law of Impropriations.

THUS

THUS have I as plainly as I could, and as briefly as the matter would permit, shewed, that out of every Benefice appropriate, there was ever a competent Portion certain, or uncertain by the Canon Law due, and by the practice of all Times and Places, especially of *England* and *Ireland*, reserved to the Vicar, for his daily Service in the Church. Also that the Bishop in his own Diocese, hath authority to require the Proprietary to make this allowance before he admit of his Present: or upon his refusal or delay, to present in his own Right, as in other cases of *Lapse* and *Devolution*: and out of the whole profits to make a competent and sufficient allowance for the Vicar, and to compel the Proprietary to performance thereof by excommunication. And lastly that both the right of the Vicar, and the power of the Bishop in these Cases have ever been warranted by the Laws and Statutes of the Kingdom. If then this was Law heretofore, it is Law still, unless it be either expressly revoked, or tacitly disannulled since the time of the dissolution. And this is the point which cometh next to be discussed.

And truly for mine own part, I must confess, that I could never yet learn of
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any Statute made since the dissolution in either Kingdom, which either tacitly or expressly doth wholly abrogate, or in part derogate from the Canon Laws, and the laudable Customs and ancient Statutes of these Kingdoms in this point. And pity were it, that the Laws of the Kingdom, having left unto the Church, especially to this of *Ireland*, this only board, whereby to save it self from the miserable wreck which it suffered by the overflowing Deluge and Inundation of *Unions* and *Impropriations* in the time of Popery, the Parliament should be thought guilty of so great a Sin, as to rob her of this poor means, to save her self withal. Rather it might be hoped, that being put in mind thereof, and if need should so require, they would more plainly expound their meaning, and in such sort, as might best stand with the Glory of God, the good of the holy Church, the honour of so high a Court, and with the Wisdom of every particular Member thereof. But my purpose is not at this time, to perswade a Parliament to make a Law; but to prove unto the World, that the Law is of force already, and wanteth nothing but a fit and a willing hand to put it in Execution. In pursuit of which point, I list not frame un-

to my self an adverse party: Rather I wish, that the justice of the cause may never find an Enemy; Neither will I be curious in forging Arguments against mine own opinion, for that were but like tilting at a *Sarazens* head. Only I will shew, that all those Statutes which most properly concern this matter, make nothing against, but altogether for the Vicar's maintenance, in such sort as hath been before declared; wishing and hoping also, that some religious Professor of the Common Law, may hereafter upon these poor grounds of mine, go on, and maintain this cause of God and of his Church, with more strength of Wit, and force of Arguments, than I am able to do, in a point which doeth not so properly belong unto mine own profession.

28. & 31.
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in Eng-
land. 28.
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VIII. in
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The Statutes therefore that principally concern this matter, are those of 27. and 31. *Henry VIII.* and 1. *Edward VI.* in *England*, and those of 28. and 32. of *Henry VIII.* here in *Ireland* to the same effect. All made for the dissolving, suppressing, surrendring, and taking into the Kings Hands the *Monasteries*, *Free-Chappels*, and other religious Houses in both these Kingdoms. In these Statutes it is intended, that the King shall have and hold the said *Monasteries* with their *Parsonages* appro-

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appropriate, and other Lands, in as large and ample manner and form, as the late Abbot or Prior held them, at the time of the dissolution, suppression, or other giving up of the same: for so say the Statutes. ' His Majesty shall have and enjoy ' to him and his Heirs for ever, all and ' singular such Monasteries and Tithes; ' and in as large and ample manner, as ' the Abbots now have them, in the right ' in their Houses. And in another place of the same Statute it is said; ' That the ' takers from the King, shall have and ' hold all such Lands, &c. And shall ' have all such Suits, Actions, Entries, &c. in like manner, form, and ' condition, &c. And in another passage; ' That the King shall hold them ' in the same State and Condition as now ' they be, &c. Which Words of *Manner, Form, State, and Condition*, are not to be restrained, as I conceive, to the present and actual possession of the Abbot, at the Day of the Dissolution: but to the universal Right which he had in the name of his House. And therefore we find it sometimes added in those Statutes, *Or of right ought to have had, held, or occupied the same, at the time of the dissolution.* For whether the Abbot had any thing unjustly detained from him, the King

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King succeeding in his Right, had Action to recover it; because the Abbot might, and of Right ought to have recovered the same: Or whether the Abbot owed any thing to any Man, or wrongfully detained from any Man, the King or his Grantee, standing seized in his Right, might be impleaded for it, because there was no more passed to the King, than the Abbot ought of right to have possessed. And therefore the Law chargeth the King with the payment of all the due Debts of the Abbots, or their Houses, by the Statute 27. *Henry VII.* in *England* not printed. Whereas therefore it is said, that the King shall hold those Lands and Improvements, in the same Manner, Form, and State, as the Prior did at the time of the dissolution; I take the meaning to be, that he shall enjoy them by vertue of that Act, with the same Limitations, Privileges, and Burdens, as the Prior did. As for example. The *Templers* held their Lands exempt from payment of Tythes, not simply, but *sub modo: scilicet, quamvis propriis manibus excoluntur*: wherefore *sub eodem modo*, and in the same Form and State, the King doth, and ought, to hold those Lands exempt from payment of Tythes unto this Day. And that this is so, and that

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ly look to the present actual Estate of
those Lands, but had an Eye to the whole
right of the Abbots, and to all future pos-
sibilities, appeareth plainly by a Case of
the 11th of the late Queen, reported by ^{11. Eliza-}
Dier. Where a Prior of a late dissolved ^{beth. Dier.}
House of St. John of Jerusalem, had long
before the dissolution, made a Lease of
the Mannor of D. for Term of Years un-
to A. which A. being Tenant, did pay
Tythes of the said Mannor, to the Ab-
bey of Rochester. Upon the dissolution,
the King granted the reversion of the said
Mannor in Fee, unto one Stathome and
his Heirs. Afterwards the Lease expired
and Stathome taking the Land into his
own Hands, refused to pay Tythes, al-
ledging, that the Mannor was passed to
him, *To have and to hold the same in as am-
ple manner as the Prior held it, &c.* And
further declared in Chancery; that the
said Prior, so long as he held it in his own
hands, was discharged from payment of
Tythes, by a privilege from Rome, as
all the Cisterrians, Hospitalers, and Tem-
plars were. And upon consideration of
the Statute of 27. Henry VIII. It was
resolved by Catlin, Saunders, Southcote,
and Dier; and upon their opinion it was
accordingly decreed by the Lord Keeper
that

King succeeding in his Right, had Action to recover it; because the Abbot might, and of Right ought to have recovered the same: Or whether the Abbot owed any thing to any Man, or wrongfully detained from any Man, the King or his Grantee, standing seized in his Right, might be impleaded for it, because there was no more passed to the King, than the Abbot ought of right to have possessed. And therefore the Law chargeth the King with the payment of all the due Debts of the Abbots, or their Houses, by the Statute 27. *Henry VII.* in *England* not printed. Whereas therefore it is said, that the King shall hold those Lands and Improvements, in the same Manner, Form, and State, as the Prior did at the time of the dissolution; I take the meaning to be, that he shall enjoy them by vertue of that Act, with the same Limitations, Privileges, and Burdens, as the Prior did. As for example. The *Templers* held their Lands exempt from payment of Tythes, not simply, but *sub modo: scilicet, quamāiu propriis manibus excoluntur*: wherefore *sub eodem modo*, and in the same Form and State, the King doth, and ought, to hold those Lands exempt from payment of Tythes unto this Day. And that this is so, and that

that those Acts of dissolution did not only look to the present actual Estate of those Lands, but had an Eye to the whole right of the Abbots, and to all future possibilities, appeareth plainly by a Case of the 11th of the late Queen, reported by ^{11. Elizabeth.} *Dier.* Where a Prior of a late dissolved House of *St. John of Jerusalem*, had long before the dissolution, made a Lease of the Mannor of *D.* for Term of Years unto *A.* which *A.* being Tenant, did pay Tythes of the said Mannor, to the Abbey of *Rochester*. Upon the dissolution, the King granted the reversion of the said Mannor in Fee, unto one *Stathome* and his Heirs. Afterwards the Lease expired and *Stathome* taking the Land into his own Hands, refused to pay Tythes, alledging, that the Mannor was passed to him, *To have and to hold the same in as ample manner as the Prior held it, &c.* And further declared in *Chancery*; that the said Prior, so long as he held it in his own hands, was discharged from payment of Tythes, by a privilege from *Rome*, as all the *Cisterrians*, *Hospitalers*, and *Templars* were. And upon consideration of the Statute of 27. *Henry VIII.* It was resolved by *Catlin*, *Saunders*, *Southcote*, and *Dier*; and upon their opinion it was accordingly decreed by the Lord Keeper that

that then was, That the said *Stathome* and his Heirs, should hold the said Manor, discharged from payment of Tythes, *Tanque a ceo, quils ceo lesseront & misseront a ferme; i. e.* until such time as they should let it out to farm: for *sub hoc modo* was the privilege granted to the Prior. and *sub eodem modo* was the Land to be held by the King, and from him by *Stathome* and his Heirs. By the same reason, if at the time of the dissolution, the Prior had held it in his own Hands, and consequently it had come to the King, and from him to *Stathome*, discharged from Tythes in the beginning; yet if afterwards he had let it out to a Farmer, his Farmer should not at this Day be discharged, because the Priors Farmer was to pay it, notwithstanding the Privilege. And *Stathome* was to hold it, *In such and in like ample manner*: True, but in no more ample manner than the Prior did. Now the Prior was to hold it discharged from payment of Tithes, no longer than while he held it in his own Hands, therefore also *Stathome* shall hold it in the same manner, and with the same Limitation.

This have I heard delivered by Men of good sufficiency and skill in the *Common Laws*. And *Dier* semeth to aver as much,

much, when he saith: *Tanque à coe quilz ceo lesseront & misseront à ferme.* Implying thereby, that so soon as it should fall into a Farmer's Hands, the Privilege should be suspended, as being not simple but modal, and restrained only to the Person of the principal Lord or Owner, not extended to his Farmer. And generally, look what Privileges the *Abbots* had concerning those Lands, the same are still pleadable by the Takers from the King: and what burthens soever the *Abbots* were chargeable with, with the same are their Successors at this Day; for *quoad hoc* they still retain the Nature of *Abbey Lands*.

From whence I conclude, that these words of *Manner, Form, State and Condition*, are not restrained to the present and actual possession wherein those Lands were held at the time of the *Suppression*: but do comprehend the whole Nature of their Title, with all Privileges and Burthens whatsoever thereunto belonging, or in any wise appertaining. And therefore to draw now unto our purpose: Whereas upon every *Impropriation* a convenient Maintenance was heretofore reserved for the Vicar, as hath been before declared, which Maintenance was to be made good unto him from time to time, by the *Ab-*
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bot or other Proprietary, and that out of the very Fruits and Revenues of the Parsonage: It is manifest, that the *Parsonage*, in whose Hands soever it be found, remaineth still chargeable with the same burthen. For *Res transit cum suo onere*, and whosoever now holdeth it, is to hold it in the same and like *Manner, Form, State, and Condition*, as the *Prior* did. But the *Prior* held those *Appropriations* with the Charge of a competent Maintenance to the *Vicar*, at the Discretion of the *Ordinary*, therefore the *Proprietary* that now is, is chargeable with the same, and is to be impleaded for it, as the *Prior* was.

But the *Statute* is yet more plain for the poor *Vicars* profit: For be it that the *Appropriation* had been passed to the King, and from him to his Grantee, without mention of such *Manner, Form, State, and Condition*, as is before recited: yet afterwards the *Statute* addeth a full and perfect Clause of *Saving and Reserving* his Right unto him in these Words; ' Saving to all Person and Persons, Bodies politick and their Successors, all such Right, Claim, Title, Interest, Possession, Rent-Charges, Annuities, Leases, Farms, Offices, Fees, Liveries and Livings, Portions, Pensions,

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other profits, which any of them have,
claim, ought, may, or might have had
in or to the Premises or to any part or
parcel thereof, in such like Manner,
Form, and Condition, to all intents,
respects, and purposes, as if this Act
had never been had, ne made, &c.

These words *Salvo Jure* (as one saith)
Verba sunt magna efficacia; and the rea-
son is given by *Bartolus*, because *Prote-*
statio conservat jus protestanti. And as
they are Words of great efficacy; so
likewise are they of very large extent:
For this Word *jus*, *ad personas*, *ad Res*,
ad actiones pertinet, saith the Emperor *Ju-*
stinian. And therefore when all Right is
saved and reserved by the Act, it is ma-
nifest, That the Right of Action and
Recovery is reserved as well as any other;
For it were a vain thing for the Law, to
give a Man Right to a thing, and not a
Right of Action, to recover it. Well
then, the *Statute* saith unto every Person;
Bodies politicke and their Successors, all
Right and Claim to any part or parcel of
any Lands; Parsonages appropriate; or
other Hereditaments, Livings, or Pro-
fits coming to the King, by the Dissolu-
tion of the *Monasteries*. A *Vicar* is a Bo-
dy Politick, and had at the time of the.

Bartol. ad
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bus modis
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Dissolution, Right, Claim, and Action to so much of the Appropriate *Parsonage*, as would make a congruous and competent Portion for his Maintenance, as hath been before declared. Therefore this Right is reserved and saved to him and his Successors still: And so saved to all intents and purposes, as if this Act had never been made. Had this Statute never been made, the *Monasteries* had never finally been dissolved, had they continued, this Action had been good against them: and therefore is still good against the *Proprietary*, who now succeedeth in the Abbots Place.

Likewise the Bishop of the Diocese at the time of the *Dissolution* had a Right of Power and Jurisdiction in himself, whensoever the Abbot presented a Clerk unto him for Institution, not to admit him, unless the Abbot would first allot, lay out, and assign a convenient Portion for his Maintenance. If the Abbot had not made such Allowance within the time limited by the Bishop, the Bishop had a Right in himself to collate the *Vicarage* upon the Presentee, and to make a fit Allowance for him, at his Discretion, out of the Fruits and Profits of the Appropriation, by sequestering them unto his Uses. If the Abbot refused to obey, or presumed

med to violate his Sequestration, the Bishop had power to compel him by Ecclesiastical Censure, and Excommunication, the end whereof was Imprisonment by the secular Arms, without Bail or Main-prize, until the Order be obeyed. If the Abbot presented not at all, the Ordinary had Right of Collation, as in Case of Lapse and Devolution: and generally he had a Right and Power in himself, to tax the Benefices in favour of the *Vicars*, as hath been formerly proved both by the Laws, and also by the Practice of those times.

This Right the Bishop had at the time of the *Dissolution*; therefore this Right is safe unto him still; and safe to all Intents and Purposes, as if this Act had never been had ne made. Had this Act never been made, the Abbots had still continued, and upon them he might now exercise, as formerly he did, all that his Power, Right and Jurisdiction: Therefore he may now proceed in like manner against the *Proprietary* which holdeth the same in his Possession at this Day, and in no other Manner, Form, State and Condition than the Abbot did: For the Words are plain, that what Right soever he might claim if this Statute had not

been made, the same he may claim still notwithstanding it is made.

And it is to be observed, that the Statute useth as general words as the Wit of Man could possibly devise, *Saving to all Persons &c. to all Bodies politick, &c. All Right, Title, Claim, Interest, Living, or other Profits, &c.* thereby to give satisfaction to every Man that might fear any prejudice to himself from this Act. And therefore if the Bishop should say, My Jurisdiction and My Interest of Right in assigning a due Portion unto the Vicar at my Discretion, is impeached, because the Parsonage now goeth to the King, and from him to other Lay-Men; The Statute answereth that, No: For all his Right and Interest is saved to him, as if this Statute had never been made. If the Vicar should say, That by the Law heretofore he had *Congruam Portionem* by way of Proviso saved and due unto him: and that he could sue the *Abbot* before his Ordinary for so much of the Parsonage as would serve to Maintain him in a more fit and decent Fashion: but that now he hath no Action against the King or any other Man. The Statute answereth, that what Title soever the Vicar, as a Body Politick, had to any part or parcel of the Parsonage, the same is preserved

served and saved to him still, as well against the King, as against his Grantee, in as ample manner as as it was heretofore belonging to him against the *Abbot*. That whereas he claimeth Allowance out of the Rectory, under the name of Portion, be it certain or uncertain : Let him but look the Book, and he shall find, that the Parliament was careful to reserve all Portions in expresse Terms, to any Body Politick, or Person which could claim them, in such manner and form as he might have claimed it, if this Statute had never been made.

For it is manifest, that the meaning of the Parliament was not to hurt, or hinder any Man, but only to suppress the *Monks*, in that it was tender and careful to reserve to every Man his Right, by what Name or Title soever he could claim it, Rents-Charges, Annuities, Fees, Pensions, Portions, and to the Bishops or others claiming Episcopal Jurisdiction, all *Synodies*, *Proxies*, and other Profits : So that as the Wit of Man could not devise more general Terms to comprehend all Mens Rights ; so the Gravity of a Parliament could not descend to more particular Words to expresse every Man's Right, which it labour'd to preserve. And as for the point of Jurisdiction, the

The poor Vicar's Plea

Parliament was far from divesting the Bishops of any part thereof, That it submitted all exempt Places of Monasteries, or other privileged Houses, to their Jurisdiction. Much less was it their meaning, to deprive the Vicar of that small Means which the Law afforded him, by quarrelling the Bishop upon this point of Jurisdiction, rather than upon any other. Neither can I think, but that if any of the High Court, whereunto nothing useth to be called, nothing is admitted, but the Flower of Wit, Nobility, and Wisdom, should now be raised from the Dead, and asked whether their meaning was, when they had saved unto every other Man his Right, only to wrong the Bishop? or when they had preserved unto every other Man his Claim to any part or parcel of those Abbey-Lands and Parsonages, only to wrong the Vicar, or to debar him, not of that liberal Allowance, which the Law of God giveth him, but of that small Remainder which the Law of Man hath left unto him for his Maintenance, in regard of his dayly Service at the Altar? He would answer, it was not their meaning; That the words of the Statute can bear no such construction; That no Lawyer can wrest the Statute to any such sense, unless he first

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strain his own Wit beyond Sense and Reason.

Neither can it be said, That because there is not in those Clauses of *Reservation* any express mention made, either of the Bishops Jurisdiction in this point, or of the Vicars Portion in particular, therefore it ought not now to be allowed.

For the Statute maketh no mention at all of *Reparation of Chancels*: yet because the *Abbots* receiving the Tythes were out of them to keep the Chancels in *Reparation*; therefore the King also taking them into his hands, chargeth himself and his Grantee with the same burden: for the Leases of old times were wont to run in this manner; *Reddendo & solvendo annuatim omnes & singulas Procuraciones, &c. Ac etiam reparando Cancellōs earundem Ecclesiarum*. Although in Leases of latter times this Clause is (as I take it) commonly left out. Likewise the Statute maketh no mention at all of any Curates Wages to be reserved: yet doth the King in all Grants of Parsonages, where there is no Vicar Endowed, charge the Grantee with finding of a Curate. And the old Leases were wont to run in this manner, *Solvendo annuatim omnes procuraciones, &c. & inveniendo Curatorem*. But Leases of later times, run

run somewhat more sparingly in this guise, yeilding, paying, and bearing all *Proxies, Synodals, and Stipends of Curates*. In both these Cases the King chargeth himself with this burden, although there be no Reservation thereof mention'd expressly in the Statute. But because every Man's Right was reserved in the Statute, and the People of every Parish had a right to have Divine Service said unto them, in Consideration of the Tenth Part of their yearly Profits which they give in lieu of that, and of none other thing, therefore the King chargeth himself with the finding of one that shall perform this Duty to them. And because such a one must have a Maintenance, therefore he chargeth himself or his Grantee with paying a Stipend also. This he doth *non ex gratia, sed ex debito*: And because the *Abbots*, from whom he had those Parsonages, were before the Dissolution charged with the same. Whence it followeth, that notwithstanding there be no express mention made in the Statute, of the Jurisdiction of the Bishop in this point, and of the Vicars Portion in particular: yet are they understood to be reserved, because they are also comprised in the general, as all others are.

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Moreover, the Statutes of either King-
dom which concern this matter, bear
this colour in the Face. *That the Priors,
Abbots, and other Religious Governours,
with the assent, and consent of their several
Convents, and in Writing under their Com-
mon Seal, gave up all their Lands, Houses,
Parsonages appropriate, and Vicarages into
the Kings hands.* Upon which Surrender
of theirs, the King was enabled to have,
enjoy, and possess the same *in such man-
ner and form, &c.* Now it is manifest,
that by vertue of their Surrender, no-
thing could come unto the Kings hand,
but that which was theirs: And it is as
manifest, that the Right of the Bishop,
and the Claim of the Vicar, were not
in the *Abbot or Prior*; and therefore
cannot be intended to pass unto the
King by any Act of theirs. For *Quod
meum est sine facto meo à me transferri non
potest*: that which is mine cannot pass
from me, but by some Act of mine. Last-
ly, some Men are of opinion, that this
course cannot be taken for the Benefit of
the Vicar; and that his Right and Action,
if any he had before, is now extinct and
lost, because the Impropriation coming
to the Kings hand, the nature of the
thing it self is altered, and made a Lay
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formed, that the nature of those things continueth still the same, and is not changed: For in the Statute of 1. Edw. VI. It is expressly said, That the King shall hold those Lands of *Chantries, Colleges, and free Chapels*, in as large and ample manner and form as the Priests held them, &c. and in their Natures and Qualities: So then though the King now holdeth them to a different end and use, yet he holdeth them in the same nature which they had before. And what I pray you can the nature of these and such like things, which consist in *Jure*, be, but the Manner, Form, State, and Condition, wherein they are possessed? Now it hath been formerly declared, that they are still held in the same Manner, Form, State, and Condition, wherein they were held before: therefore it followeth, that they continue still in the same nature; and consequently, that their Nature is not altered or changed. Moreover it is a Rule in *Philosophy*, that *Forma dat nomen & esse*, the Form of every thing giveth it Name and Nature; nay, rather it is the very Nature and Essence of the thing it self; as for example. The reasonable and intellectual Soul of a Man is his Form: And therefore the *Philosophers* say, That *Anima est quisque*:
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it is the Soul that maketh every Man to be what he is, in his proper nature, and is the Man its self: whence it followeth, That because the *Proprietaries* hold the *Benefices* in the same Form in which the *Abbots* held them, therefore they hold them in the same Nature also; and consequently, their Nature remaineth, and is not altered. And why should we think, that the Nature of these things is altered rather than the name, seeing that the Form which giveth both alike, continueth still the same? Look the Statutes, and you shall ever find them called by the same names which they had before: *Benefices, Rectories, Parsonages, Appropriations, Tythes, Church-Duties*, and the like. But by the name of Lay-Fees or Chattels, you shall never find them mention'd in the Statutes. And to shew yet further, that in the opinion of that very Parliament, which made the Acts of *Dissolution*, as also in construction of Law, it was generally understood, that the nature of these Appropriations, and Tythes remained still the same, without change or alteration; It may please them to consider, That when the *Monasteries* were all dissolved, and laid wast, and the Impropriations sold away into Lay-Mens hands: yet were the Tythes unto

unto them, like Nuts cast into little Children, which could not crack them : Neither had those Lay-Men any means, or Action to recover them : And therefore by the Statute of 32. *Hen. VIII.* Lay-Men were enabled to sue for Tythes in the Ecclesiastical Court. By which it plainly appeareth, that these Tythes retain still the nature of Ecclesiastical Duties, and Goods properly belonging to the Church ; else why should the Ordinary hold Plea of them between Lay-Men more than of other Chattels ? And if they had altered their nature, and of Tythes had been made Chattels or Lay-Fees, why should they not have been recovered by Action of Debt, or otherwise at the Common Law, without having recourse at all to the Court Christian ? Therefore the nature and quality of these Appropriations and Tythes is not altered, by coming into Lay-Mens hands, no more than a peice of Coin is changed, when it passeth from one hand to the other.

From all which I conclude, That what Right soever the Bishop had to his Jurisdiction, the Parish to have a Minister, the Minister to have Allowance, before the *Dissolution* of these *Monasteries*, and making of the fore recited Statutes, the

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same they and every of them have at this Day, notwithstanding those Statutes; and the rather for them, because they help to save that Right, both of Jurisdiction to the one, and of Maintenance to the other, which otherwise might seem to have been lost in both.

This then I take to be clear in Law, that wheresoever a Vicar is to be ordained, there also a competent Maintenance is to be allowed. But then there remaineth yet a doubt, whether all Churches in general, which heretofore belonged to the Monks, are necessarily to be served with perpetual Vicars, or may be supplied with Stipendiary Curats; a doubt of too great difficulty to be dissembled, and of too great consequence to be neglected in that Kingdom: because all Proprietaries there, desire to gain this point upon the Bishops, and some pretend more colourable reason for it, than others do.

For the better clearing of this doubt, it is to be observed, that the Parsonages were heretofore either granted to the Monks, *In proprios usus*, from whence they have their Name of Impropriations; or else they were united to their Tables, and are therefore called *Mensalia* in the Law. Concerning the Nature and Quality of the former. *Innocentius* saith, that
Per

*Innocent. ad c. pasto-
ralis : extra
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1.* Per hac verba (concedimus tibi Ecclesiam in
propriis usus) intendit concedere, quod ad-
ministrationem habeat Ecclesia: Et quod re-
tento bono statu Ecclesie superfluos tantum

*Ad c. de
Monachis
extra de
Præbend.*

*Tit. de ca-
pel. mona-
chorum : in
sexto.*

reditus in proprios usus convertat: Debet enim Ecclesiam sibi concessam in primo statu retinere. And Panormitan in his Commentaries upon the Chapter De Monachis Tit. de Præbendis, alledging the same words of Innocentius, addeth further, *Habent etiam præsentationem Rectoris ex tali concessione.* If then the Monks had by vertue of such Grant, only the Presentation, it is manifest, that the Institution was still reserved to the Bishop. And that in this Case the Vicar ought to be perpetual, and to receive Canonical Institution from the Ordinary, appeareth by all those Canons which I have formerly alledged for proof of the Vicars Portion. So doeth it also, and more plainly, by a certain Decretal of Boniface the VIII. where he saith, *Presbyteri qui per Monachos in earum Ecclesiis præsentantur Episcopis, & instituuntur ab ipsis, cum debeant esse perpetui, consuetudine vel Statuto quovis in contrarium non obstante, &c.* And the Pope was wont in his Grants of Appropriation, always to add a Clause of Reservation of Maintenance, *Vicarijs Canonicè instituendis.* By which it is evident

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dent, That all Appropriations made *Quoad temporalia*, or *in proprios usus*, ought to have a perpetual Vicar, which is to receive his Canonical Institution in Form of Law, from the Ordinary. Of this sort are almost all the Appropriations of this Kingdom which have lighted into my Hand: and thus they pass. *Salva sustentatione Vicariorum: salvo jure Episcopi: in usus suos proprios convertant.* And many times, as namely in an Appropriation which I have seen of the Rectory of *Ballroonthery*, made by the Archbishop of *Dublin* to the Prior and Convent of *Kilbixi*, together with the Erection of the Vicarage and Maintenance saved to the Vicar, this Right of Institution is reserved by expresse Terms to the Bishop, and the Presentation only left unto the Prior; so that this kind of Appropriation cannot warrant the Proprietaries to collate the Curateship as now they do, and send their Curate for a Licence to the Bishop. But they are to present, and the Bishop is of Right to grant Institution, as well for the Title of the Benefice, as for the Cure of Souls: And no Marvel: For besides that our Saviour in the beginning taught us, *That an hired Shepherd was never profitable for the Sheep*: the Canons also of the old Church ordained in
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manner, *Præcipiunt etiam, ne Conductitijs Presbyteris Ecclesiæ committantur*: A Precept worthy to be written in Letters of Gold over every Church Door, as a Charm, to keep out the Destroyer. But to let pass the Usage, and Customs of former Ages in foreign Countries, and to make it yet more plain, that even within this Kingdom of *Ireland*, the Bishops ever claimed, and ever had this Right of *Institution* to all such Churches as the Monks held *in proprios usus*: and thereupon laid out reasonable Allowances for the Vicar. I have seen an ancient Bull of Pope *Alexander* the third, whom I noted before to have been the first that opposed himself against the Avarice of the Monks in this kind. To him certain Monks of this Kingdom of *Ireland* made their complaint against the Bishops for troubling them in this point; and craved a Privilege against their Authority for the time to come; which he granted: and concluded his religious Grant in this manner.

Registr.
Sancti
Thomæ in
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ghams Tow-
er Dublin.

Nos itaque vestris supplicationibus inclinati, ut sicut hætenus, sic & in posterum positis in dictis Ecclesiis, per hujusmodi Canonicos & Capellanos vestros facere deserviri; nec vobis in iis taxari valeant Vicaria, seu Vicarij perpetui institui in iisdem, auctoritate Apostolica indulgemus, &c. Si quis autem

contra

contra attemptare præsumpserit, indignationem Omnipotentis Dei, & Beatorum Petri & Pauli Apostolorum ejus se noverit incursurum, &c.

By which it is plain and evident, that as the Proprietaries of these Days do, so did their Predecessors and Ancestors the *Monks*, first in stipendiary *Curates*: and make them the least allowance that possibly they could: But when the Bishops challenged their Right, and began to know themselves in their Places, the *Monks* then fled, not to the Sanctuary of the Law, because it was against them, neither stood they upon their Custom, which (because not grounded upon Reason) was not able to protect them: but having no other Refuge, sought to the *Pope* for a Privilege, instead of a Pardon, for such Abuses committed already, and afterwards to be committed. A strange Case, that the *Vicar* of Christ here on Earth, should grant so lewd a Privilege. But this ever was, and still is, the Practice and Policy of that See, to make strict, and, many times, good Laws, and then to grant large and lewd *Dispensations*, thereby to satiate (if it were possible) her insatiable Avarice. But to return unto our purpose: Neither this, nor any other like Privilege could,

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before

before the Dissolution, free the *Monks*, nor can at this time exempt the Proprietaries their Successors from the Jurisdiction and Power of the Bishop in that behalf. For long after the days of *Alexander* the Third, *Clement* the Fifth, seeing the Desolation which grew daily upon the Church by reason of such Abuses of the *Monks*, especially in that they served their Cures by their Chaplains and Stipendiary Curates, made the Decree which I mention'd before, thereby enjoyning the *Monks* to present their Clerks unto the Ordinary, from him to receive *Canonical Institution*. All which he commandeth to be observed: *Non obstantibus exemptionibus, aut aliis quibuscumque privilegiis, consuetudinibus vel Statutis. Quae circa praemissa veleorum aliquod Religiosis ipsis in nullo volumus suffragari.* This he declared, not fearing the indignation of *St. Peter* and *St. Paul*, which by the Curse of *Alexander* the Third, he was to incur: but perswading himself (as well he might) that God would never be offended with him for cancelling a Privilege which tended so directly to the Overthrow of his Worship and Service, and to the Destruction of his Church here on Earth: wherefore if any Proprietary would at this Day plead the

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like Privilege granted to *Monks* from whom he derives his Title, he must shew it granted since the Time of *Clement* the Fifth, and with a *Non obstante* to that Decree of his, otherwise the *Clementine* reacheth to them of after Date, as well as to the former : neither can they alledge, that they have used so to do time out of mind, and beyond the Memory of Man ; for so had those *Monks*, and yet wanted a Privilege to protect them : and the *Clementine* runneth with a *Non obstante* of any Custom or Prescription : whence I conclude, that all Proprietaries which at this Day hold Churches which were antiently given *in proprios usus* to the *Monks*, may not now, as they do, nominate their Curates, and send them to the Ordinary for a Licence : but must as Patrons, present their Clerks unto him, and he (if they be Worthy) must give them Canonical Institution , and make them perpetual Vicars or Rectors of the Church, with Cure of Souls : For such was the State of the Church before the Impropriation made, and such it must continue.

But the greater doubt is of those Benefices which were given *ad Mensam Monachorum*. These Grants were made by way of Union, and pass under divers

Forms : sometime by these Words, *Concedimus pleno jure, tam in spiritualibus quam in temporalibus.* The proper effect of all which Grants seemeth be, That these Benefices need no perpetual Vicar, but may be served by a Stipendiary Curate. For first these are excepted from the general, where it is said, *In Ecclesiis vero suis, quæ ad eos pleno jure non pertinent, instituendos Presbyteros Episcopis representant :* By which it is implied, that if they held them *pleno jure*, they could not be compelled to present. And in another place it is said, *Præmissa*

C. cum
plantare :
extra de
privileg.
C. in Late-
raensi.

C. Unico : *vero intelligimus de beneficiis quæ de suppl. non sunt de mensa Prælatorum ipsorum, neglig. prælat. in sed. specialis Rectore habere consueverunt : sexto.*

De excessu
prælat. in
Clement.

Gloss. ib.

by which it appeareth, that they had no certain Rector nor perpetual Vicar ; but were served by a Chaplain. And the *Clementine*, in the Title *De excessu Prælatorum*, blameth the Bishops for troubling the Monks in this Point, as if upon the Death of their Stipendiary Curates the Benefices had fallen void, *Quoniam ipsa per hoc Ecclesia in veritate non vacent*, saith the Law. The ordinary Gloss upon this place is famous, and all After-writers refer themselves unto it : where the Question being put, What were those Churches which might properly

perly be said to be *De mensâ Prælatorum?*

The answer is, *Quod illæ quæ sunt mensis eorum unitæ, in tantum quod Rectorem, vel Vicarium perpetuum non habeant, aliam quam illum cui facta est annexio.* And that

Doctors of the Audience in Rome, upon a case propounded, make this difference between an Appropriation and an Union.

Cum Ecclesia conceditur alicui Monasterio pleno jure in temporalibus, tunc Episcopi debent instituere Vicarium perpetuum: ubi vero unitur mensæ Episcopali, vel Abbatiali, & spectant ad illam pleno jure tam in spiritualibus quam in temporalibus, tunc ponetur in ea Presbyter temporalis, ad nutum remobilis, ad exercitium Curæ, quæ principaliter residet in eo, cujus mensæ est unita. *Rota in novis.*

And Rebuffus, following the same steps, and speaking of a Grant of a Benefice, made by these Words, *pleno jure, vel utroque jure*, addeth this exposition.

Per hoc intelligitur quod tam in temporalibus, quam in spiritualibus jurisdictionem habent, & in iis Ecclesiis constituuntur, Vicarii temporales ad nutum revocabiles, quibus non providetur de congrua portione. *Rebuff. de congrua portione.*

And lastly Ranchinus, in his Annotations upon Guido Papa. *Decisione*

154. saith that, *Ille Ecclesiæ dicuntur de mensa quæ sunt ita unitæ, quod non habeant Vicarium perpetuum.* From all which it

Ranchinus ad Guid. Papa. 154.

may

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The poor Vicar's Plea

may be gathered, That those Proprietaries, who now hold Parsonages which were heretofore united to the Tables of the *Monks*, because they are to hold them in the same Manner, Form, and Condition, as the *Monks* did, cannot now be forced to present their Clerks to the Ordinary for Institution, no more than the *Monks* could heretofore, but are only to send him for a Licence, as now they do: Notwithstanding all which, I take the Law to be otherwise, as the case now standeth: For the Monasteries might indeed heretofore serve the Cure in Churches, belonging to their Table; by a temporary Curate, if that Curate were a *Monk*, as commonly he was: or if there were no Parish belonging to the Church; but if the the Church were Parochial, and the Curate Secular, then he was to receive the Institution from the Bishop, as perpetual Vicar, and to have a competent Allowance out of the Fruits of the Benefice, as other Vicars had. And therefore *Zgbarella*, having handled this point, giveth this Caveat in the end.

Zorabel.
ad. lit. de
supplem.
negligen.
Psalas.

Sed nota & signa mente quod hoc ita procedit de se Abbas ibi collocat unum de suis Monachis, secus si seculari; debent enim Beneficia esse perpetua; & hoc non reperitur esse permissum in secularibus. Wherefore see-

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ing that now all those Churches are Parochial, and the Curates Secular, it followeth, That the Proprietaries are now to present their Clerks, as their Ancestors the *Abbots* were bound to do in the like Case: for, *Res rediit in eum casum, unde incipere non potuit*: There are at this time with us no *Monks* in being: therefore the Vicar must now of necessity be Secular; and being Secular he must be also presentative and perpetual; for so the Law ordaineth. And it is farther to be observed, That those very *Monks*, could not serve the Cure in a Church remote from the Abbey. For the *Lateran* Council, forbade *Monks* to be appointed and placed, as Curates, in Parish Churches about the Country: And *Urban* the Third ordained, that *In Ecclesiis ubi Monachi habitant, populus per Monachum non regatur*. So that neither as Curate in Churches remote, neither yet as Rector, in the very Parish where they dwelt, could a *Monk* be employed: only in those Churches which were near adjoining to their Monasteries, where they might sing Mass in the Morning, and return to their *Dorter* at Night, they were permitted to serve; and these were commonly united to their Table, and none other. And this is the cause why

*Archidia-
con. ad C.
cum singu-
lis de pre-
bend. &
dignis. in
sexto.*

why *Archidiaconus*, a Father amongst the *Canonists*, saith, that *Ecclesia, si vicina est, regitur per Priorem & Capitulum: si vero remota est imponetur ei census, & ponetur in ea Presbyter perpetuus*. For in process of time, the *Monks*, finding that these Unions to their Table, were more privileged in this point, than others, procured Benefices far distant also, to be united to their Tables: And therefore the Popes of later Times, in granting or confirming these Unions, were wont to make the like Reservation, as in other ordinary Appropriations, as *Rebuffus* testifieth. And again, in the ordinary Appropriations, if the Benefices lay near unto the Abbeyes, the Bishop was wont to wink at it, and to suffer them to discharge the Cure by some one of their *Monks*, or other Stipendiary Curates, as if they had been *mensal*. I mention'd before a certain contention, which fell between *Richard* Bishop of *Meath* and certain *Monks*; upon whose Appropriated Benefices he placed perpetual Vicars of his own Authority, and made them Allowances at his own Discretion: yet did he not use this Right and Power on all, but only upon Twelve; yielding this Reason of his Act, Because those Twelve were far off from

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the Abbey, and lay near the High-way where it was necessary that some kept Residence for the receiving of Pilgrims and Strangers, that were to pass that way: The rest he forbore to tax, because they lay near unto some Grange of the Abbey: And therefore if any came thither for Hospitality, they might as well repair unto the Grange itself, there to be received: which cause of Toleration (how good or bad soever it were) now ceaseth in our Proprietaries, because they will not make their Houses Inns for Travellers, as the *Abbots* did: wherefore as they can pretend no better Right than the *Abbots* had, so they may not in discretion challenge the like sufferance of the Bishop, as they found.

To conclude, the Summ of all is this. In Benefices given to the use of the *Monks*, which are properly called Appropriations or Improvements, the Ordinary now is, and ever was without distinction to ordain a *Perpetual Vicar* with Cure of Souls: And to compel the Proprietary to a competent and convenient Allowance out of the Fruits of the Benefice for his Maintenance: And in those *Mensal* Benefices, which were united to their Tables, the Ordinary is (as the State of things now standeth) to do the

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like: So that in all, and all manner of Benefices, as well Mensal as other, heretofore belonging to those Abbeyes or other Religious Houses, and which are now in the hands of the Proprietaries within this Kingdom, these mercenary and serving Creatures, these Stipendiary Curates are by course of Law to be abolish'd; and in their rooms Perpetual Vicars or Rectors, with Sufficiency of means to be ordained.

Sufficiency of Means I say; For it was long since observed, that beggarly Poets never make good Verses; for Poverty is a heavy Burden, and the fear thereof worketh as violently upon the Wit and Spirit of a Man, as any terror doth, and is therefore reckoned by the Orator, *inter gravissima vitæ onera*. And it is certain, that there is no one thing which doth more depress and keep down the Mind and rising Spirit of a Man, from aspiring to any high Invention or Conceit of Learning, than that doth.

*Tull. de
senectut.*

Juvenaliu.

*Nam si Virgilio puer & tolerabile deesset
Hospitium, caderent omnes à crinib' hydra:
Surda nihil caneret grava buccina: —*

faith

faith the *Satyrist*. His meaning is, that *Virgil* himself could never have described the Slaughter of *Turnus*, the Combats of *Aeneas*, the Fury of *Amata*, and other such like Arguments, with that high Conceit and Strain of Wit, and with such Loftiness of Stile as he hath done, had his mind been troubled and distracted with want of necessaries for Food, Raiment, House-Rent, and Attendance at home: Neither may we hope for better of a Preacher, if the like weight of want and Poverty lie upon him: and therefore it is requisite, that a sufficient Maintenance be provided for him, for so the Law requireth.

But then there remaineth a great and difficult Question, *What is sufficient for this Vicar's Maintenance?* For mine own part, I may not presume to prescribe what is enough or sufficient in this case, because the Law leaveth it to the Discretion of the Bishop, who must inform himself of many particulars, and frame his censure according to the private motions of his own well disposed mind; nay, I may well say, as a Learned Canonist hath said already, *De re ista non potest certa tradi doctrina*. Only we must beware, that whilst we reckon all too little for our selves, we think not every thing

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thing enough for the Minister of the Church. Zarabella upon this Question saith, *Quod sola sustentatio non sufficet, potest namque esse talis, quod non periet fame, & tamen non esset congrua, sicut esse debet in victu & vestitu, & aliis congruentibus.* And as another Writer saith, *Vicarius de hac portione congrue providebitur; nec cogentur vesci fabis, & aliis vilibus cibariis sicut Rustici.* First, Therefore in this Assignment of his Portion, there must be care taken, that he may have enough for his Food and Rayment in a decent and convenient manner. Secondly, Respect is to be had unto his Family. *Non enim sufficiens sit habenti, & personis sibi necessariis.* But who are these? and how many shall he be allowed to keep? No Man, I think, will allow him less than a Servant or two to attend upon him. *Non enim debet sibi coquere,* saith one. But this is not all: for the Law of God permitteth, and the Laws of this Kingdom have made it free for Ministers to Marry as well as others, considering well, That the Estate it self is Honourable in all Men alike: and that they consisting of Flesh and Blood as others do, have likewise their desires upon them as others have.

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It is reason therefore, that since the Law permitteth them to Marry, they should also provide them a Maintenance, for the easier bearing of such a Burthen, else is their condition more miserable than any other: for Work they may not, which heretofore they might; and to beg they are ashamed. Merchandize they cannot, which yet the *Civil Law* permitteth; and not to provide for their Family, were a fault worse than Infidelity: and therefore unless Means be allowed for the Maintenance of those, as well as of themselves, it had been better for them if they had still remained as they were. Thirdly, Regard must be had unto Hospitality: for it hath ever been thought fit, that the Minister should be enabled to relieve the Poor, to feed the Hungry, and, to receive a Stranger as he travaileth on the way: a thing more considerable in this Kingdom than in the other of *England*, for our want of *Inns*; and because the Country is of custom more barbarous to Passengers, if need requireth. And lastly, to omit all consideration of his Person, as Nobility, Degree, Desert, Age, and such like, which are not forgotten in other Countries, when the poor Vicars Portion cometh in Question, before the Ordinary

Ordinary or other Judge ; *Considerabitur in iis honestas, ut honoretur in iis officium Sacerdotale*, saith a Canonist.

But some Men will say, that this Question is long since answered, and the Doubt determined by Act of Parliament here in *Ireland*. It is true, that in the XXXIII. Year of *Henry VIII.* there passed here an Act ; wherein it was contained, That whereas divers Parish-Churches of the Kingdom of *Ireland* were heretofore appropriated to Monasteries and other Religious Houses, now dissolved, wherein Divine Service was done, maintained, and kept, and the Cure served by Religious Persons of the said Religious Houses, &c. Therefore there should be an able Man appointed for that purpose in every Parish-Church. In consideration whereof, and to the intent aforesaid, it should be Enacted, That Sir *Anthony Saintleger*, Lord Deputy of *Ireland*, *I. A.* Chancellour of the Kingdom, *W. B.* Vice-Treasurer, and *S. A.* Chief Justice, with sundry others there named, or any six of them, the four Officers above named to be of the *Quorum*, might and should erect and incorporate one Vicarage of one Vicar, in every of the said Parishes, as they should think convenient, which should have

have Succession of the same for ever, to be presented by the Lord Deputy, be instituted by the Ordinary, &c. And that the said Sir *Anthony* and the rest might and should assign and appoint unto every such Vicar, such convenient Portions of Tythes, Altarages, and Oblations of the Possessions coming to the King by reason of the said Dissolution; for the Maintenance of *Divine Service*, and keeping of Hospitality, &c. Provided allways, that such Assignment did not exceed the Yearly value of 13. *l.* 6. *s.* and 8. *d.* and reserving to the King the Twentieth part out of every such *Vicarage* and the *First-Fruits*, &c.

This Act indeed was made, and remaineth of Record in the Rolls of *Ireland*, but it never took effect. But be it that it were of force, what proportion hath the Summ limited, with the ends for which it is appointed? or what Maintenance is Ten Pounds Sterling at the utmost for a Minister, to live in fashion of a Minister withall, to find himself, to Maintain his Wife and Children while he is alive, to provide for them after his Death, to pay Servants Wages; and over and above all this, to keep Hospitality, which the Statute intendeth and commandeth to be kept?

It may be, that in those Days it was enough : but what is it at this present time ? Had this Statute taken his effect, yet had it been reason, that at this time the Vicars should have claimed a new Taxation, seeing that the Rates of all things are now raised to a higher Price : moreover it is apparent that although *Henry VIII.* took away the Monasteries, and suppressed the Usurped Tyranny of the Pope in his Dominions, yet he reformed not Religion; and therefore their Oblations and Altarages, Mass Monies, and such like Fees (which were no doubt the greatest part of the poor Vicar's Maintenance, and yet was never reckoned in his portion) remained all his Days : Seeing therefore that these are now grown into disuse, reason good that their Allowance be made good again, and increased some other way. In the same Parliament, there was Order taken for the hire of Slaters and other Work-men by the day : and it is ordained that their Wages should be increased from time to time, according to the prices of Corn and other Victuals : there is now no Carpenter or Slater here, which will take less than sixteene Pence *per diem*, for himself, and twelve Pence for his Man, which amounteth to upwards of Thirty Pounds *per Annum*. What Reason therefore that

that the poor Minister, who ought to be *honorabilis in populo*, should be held to the Old Taxation of Twenty Marks *Irish* by the Year at the utmost, which cometh not to Eight Pence *per Diem*, for the Maintenance of himself and all his Family? But the poor Vicar's Lot is not so good as to have the Allowance the Statute speaketh of. Our Horse-Boys Wages are not great; would God our Vicars were no worse. Our Horse-Boys have commonly Forty Shillings Wages, besides Meat, Drink, and Lodging, and four pair of Broagues *per Ann.* How lamentable then is that which hath of late been discovered, That throughout the whole Province of *Connaught*, and in sundry other Dioceses of this Kingdom, the Vicarages, for the most part, are under Forty, and many of them not above Fifteen Shillings Sterling, towards all charges by the Year? But to conclude this point: If any Man thinks that Twenty Nobles or Ten Pounds Sterling, according to this Statute, be at this Day a sufficient and reasonable Maintenance for a Learned Minister of the Church, and Preacher of God's Word, to maintain himself, his Wife, Children, and Family, and to keep Hospitality withall; and no reason will perswade him to

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the contrary : I for my part will not be contentious, nor use farther Argument against him ; only I wish him more experience ; and that (saving my Charity) he himself, his Wife, Children, and Family, might live but one Month according to that Rate, and afterwards he be asked what he thought of the sufficiency of such Allowance. Neither is this the *nihil ultra*, of our misery ; for even unto this Day, as if the Ghosts of those *Monks* did still walk and haunt us, Ecclesiastical Livings of all sorts are continually taken from the Church, under colour of Concealments, and as if in Old Time, they had belonged to their Houses ; Insomuch, that in one Diocess, namely of *Elfinne*, Twenty five Vicarages, five Rectories, and two Prebends, are forced to have been rest from the Church by this occasion, all which did constantly stand charged in the King's Books, with First-Fruits and Twentieth part : An infallible Argument, that since the Dissolution, they have been in the proper use, and lawfull Possession of the Church ; neither do other Diocesses want their part in this Calamity. And to add to our Grief, his *Sacred Name* is herein ever used ; who of all Men mortal would most abhor it.

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For he that of his Princely Bounty, and Christian Devotion, hath of his own, given well nigh Three Hundred Thousand Acres of Principal good Land, to the Reverend Bishops, Dignitaries, and Parish-Churches, of the North of that Kingdom, would not he much more restore the Tythes to the poor Vicars of other parts, if it may appear that of Right they belong unto them? Doth King *James* Rule his Subjects by one Law, and himself another? Or have we not yet proof enough of his well willing to the Church? This then is an evil, which cannot be healed, but by that mysterious and medicinable hand of the King himself: A hand, which often hath wrought, and daily doth work greater Miracles, and Cure more running Sores than this, in the Body of the Church and Common-Wealth; and will not leave this untouch'd, if ever it happen to be brought unto him.

But to leave what we have not, and to return to what we have; I have often said, and endeavoured to prove, that the Bishop is the Man authoris'd by Law, to assign the Vicar's Portion: wherein, I am not Ignorant, that many Men may happily draw my Discretion into Question, and condemn my Judgment, in labouring

bouring thus earnestly to revive the Memory of an old discontinued, and almost forgotten Point of Law; for what if all were granted to be Law that hath been said? What profit is the Church like to reap thereby, seeing that the execution thereof belongeth only to the Bishops? Weak Men God wot, some will say, for the most part, in this Kingdom, to hold that they have, but altogether unable to recover what they had; *Medice, cura teipsum*. Their Lordships should do well to recover their own Rights first; and then we should have some hope that they would be able to prevail for the Vicars also.

True indeed; the execution of this Law belongeth peculiarly to the Bishops; but it is as true, that in this their long default, it doth now as properly belong to the King. For there is no doubt, but that before those Acts of *Dissolution*, the Pope as supreme Ordinary pretended, made all those Constitutions and Canons which before are mentioned for the Erections of *Vicarages*, and Maintenance of the *Vicars*; many of which were directed to sundry of our own Bishops in *England*; and they by the Toleration of the King, put them in execution from time to time, and were ever justified in

in their doings, by the Reverend Judges of the Land. If then the Sovereign Power in these Cases, and both the making and execution of these Laws did heretofore belong unto the Pope; then is it manifest, that the same at this day doth immediately belong unto the King, upon whom by way of Restitution, the Parliament hath seated all the Power which the Pope then usurped, in Laws not repugnant to the Word of God, and Statutes of the Kingdom. Wherefore if the Bishop cannot, yet the King can do them Right; I say, not by the Power of his Prerogative, but by a due Course and Form of Law, which no Man may repine at: And therefore, if the Right may appear to be on their side, Means of recovering that Right, cannot be wanting to them. But be it, that they could seek no higher, than to the Consistory of the Bishop; yet is not their Case so desperate as some conceive the same to be: For I have shewed before, that not only the High Court of Parliament, but also the Reverend Judges of former times, which many time thwarted with Bishops in other matters, yet ever assisted them in assigning, encreasing and restoring the poor Vicars Portion; yea and pressed them oft times

to this Duty, when they were remiss and negligent of themselves: Why then, should not we hope the like, from the Reverend Judges of these Days? Whose Piety, Zeal and Fervency in Religion, is by so much greater than was that of their Predecessors, by how much the Religion it self, which these profess, is better, and more worthy of Defence and Maintenance than the others was.

This then is the main and capital Point to be Considered of, because as a Cancer, it hath most spread it self over the whole Body of this Kingdom; yet is there one Case more, which because it is Cofin-german to the other, and wherein the Reverend Bishops have Right, as well as in the other, ought not to be neglected. And it is the Case of those Parsonages, which are annexed unto the Prebends, or Dignities of Cathedral Churches: For these, long since learned this evil Custom of the Monks, to procure the Benefices of other Parishes, to be annexed unto them, for the better Support and Maintenance of their State; altho' *ab initio non fuit ita*. For it is to be noted, That after the time of *Constantine* the Great, every greater City had a Bishop resident therein, and every Bishop a Company of Learned Men, al-

ways

ways conversant about him. These served for Colleges of Reverend Divines, to whom all Controversies of Religion were referred, and by whom they were under the Bishop decided: These were called *Presbyteri*, which importeth as much as *the Elders or Senators of the Church*, by whom the Church was ordered and advised. In which sense it is that *Tertullian* saith in his *Apologeticon*; *Nobis president probati quique Seniores: honorem istum non pretio sed testimonio adepti*. Now it is apparent by the Constitutions of the Christian Emperours, reported both in the old Code, and also in the *Authentiques* of *Justinian*; That these were all maintained by Temporal Revenues, which were in great abundance cast upon them, partly by the Devotion of the People, partly by the Munificence and Largesse of the Emperours; also there were *Salaria de publico in diversis speciebus Sacro-sanctis Ecclesijs ministrata*, tho' afterwards taken from them by *Julian the Apostate*. Moreover, these had their several Houses, wherein they lived with their Children, and Mothers and Sisters, if need required. *Illas etiam non relinqui castitatis hortatur affectus, quæ ante Sacerdotium maritorum meruere conjugium*, saith the Law. And these

Lands,

*L. privileg.
Co. de sacerof. Eccl.*

*L. cum qui
Co. de Episcop. &
Cler.*

Lands the Clergy held free from Taxes and Impositions; and not only they, but also their Children held their own Patrimonial Lands, with like freedom, in Honour of their Father's Priest-hood. The which, I do the rather alledge, to let some Men know how far they are destitute of example of former times in their Opinions, while they think it a matter unreasonable, That Cathedral Churches should have any Temporal Lands belonging to them, talking of Clergymen, as of some foreign Nation or Aliens, which ought not inherit within the Land. As for their Children, they talk of them as of unlawful Persons, and scanty worth the fostering; whereas yet the Law of God maketh their Marriages as Lawful as ours; and in their Children is oftentimes better Blood to be found, than in those which speak against them. But to return unto our purpose. The Colleges of Learned Men, in the chief Cities of the Empire, were (as I said before) maintained by Temporal Revenues: But not long after, when these means failed them, whether through the Peoples Indevotion, or whether through their own Ill-husbandry, (for Clergymens Hands could never be tied nor

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kept from aliening the Revenues of their Churches) then began they to cast abroad their Eyes, and to reach out their Hands upon the poor Ministers of the Country; who having their Tythes, were therewithal content, and in recompence thereof, held up pure Hands, thrice a Day unto their Maker; Praying instantly for the Prosperity of the People, while they were Travailing abroad, in their several Vocations. This abuse grew so great, and so hurtful to the Church, that the Council of *Lateran* thought fit to provide against it; forbidding any Canon of a Church to meddle with a Parsonage of the Country.

Whereupon a certain Bishop wrote unto *Honorius* the Third, Pope of Rome, complaining, that the *Canons* of his Church, since the *Lateran* Council, were unable to live of the Revenues of their *Prebends*, (which were, no doubt, that which was left of their Temporal Lands) being debarred by the Decree of the Council, from taking Parsonages as they did in former times. And thereupon, the Pope wrote back, in this manner; *Si evidens necessitas, vel utilitas exigat, Prebendas Ecclesie tue poteris de Capellis in perpetuum annexendis ijsdem, sicut discretionem pravia expedire*

pedire videris augmentare. Reservatâ tamen congruâ Capellarum Presbyteris portione.

Who could have done this? Who could have devised such a trick, to elude the Letter, and frustrate the meaning of a wholsom Law, but he, which is the Vicar of Christ, by a Patent of his own making? The Law forbiddeth a Prebend to take a Parsonage of the Country; because they being two Livings, and each of them requiring the Personal Residence of the Party, were incompatible in one and the same Man. The Pope teacheth them how to avoid this inconvenience, by making the Canonry and the Parsonage (tho' never so far distant in place) to become one Benefice, by union; as if the personal Residence, which the Law requireth upon each of them, were any ways procured, or the Law fulfilled by this Device; yet it is said by a certain Canonist, that this was *Optimus modus, & Provisio augmentandi redditus Canoniorum*; and I confess as much: But could there have been a more Cut-throat Course devised for the Destruction of the Parish-Churches? It is fit there should be such Colleges, in Cathedral Churches, for the uses above mentioned. True, but let them have their proper Maintenance,

as

as they had in former times, out of Temporal Lands; not out of Tythes, which properly belong to the particular Ministers of the Parish-Churches. For as *Panormitan* very well saith, *Institutio Beneficiorum fundamentum suscepit finaliter propter cultum divinum, Implican-tem Divinorum ministerium deservientium in divinis eo loco ubi instituantur.*

Worthy therefore of everlasting Memory, is the late Action of our Sovereign, who having liberally endowed many Bishopricks, and the several Dignities and Prebends of their Cathedral-Churches, with a large and ample proportion of Lands, in the *North* of this Kingdom, took from them all their Parsonages annexed or united, and made them presentative to the use of particular Incumbents in time to come, which shall thereby be enabled to reside continually in their several Parishes, for the Instruction of the People.

But we must now take things as they are: Parsonages therefore are united or annexed to the Dignities of Cathedral-Churches; yet with a Reservation of a convenient Allowance for the Vicar, as is before declared. There was ever little difference between the Monks of Abbeys, and the Canons of Cathedral-Churches:

The poor Vicar's Plea

Churches: The difference that was, was this, *quod Canonici regulæ inserviebant laxiori*; and therefore they are oftentimes paralleled in the Law, and what was ordained in the one, was commonly *propter paritatem rationis* extended to the other. They are like in other cases; they are twins in this; yet as the state of things now standeth, the case in Hand is less doubtful in these Canons, than in the Successors of the Monks; and the Bishops Power in this kind is, (if not greater) yet more apparent over Them, than over the Other: Because there is no Act of Parliament pretended to defend them from his Jurisdiction; no Surrender, no Title of the King, no imaginary Alteration of their Quality and Nature; but they continue the same, they were from the beginning. The Law then requireth, that every such *Dignitary* should have a perpetual *Vicar*, instituted by the *Bishop*, to serve in the Church, united or annexed to his Dignity. For so saith the Decretal of *Innocent III.* *In ipsa Ecclesiâ parochiali idoneum & perpetuum habeat vicarium canonicè institutum, qui congruentem habeat de proventus ipsius Ecclesiæ portionem.*

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And hitherto the Case of these Men, is all one, with the Case of the Monks: but there followeth a Clause, which maketh the Case harder with them than with the Monks. *Alioquin illa se sciat autoritate hujus Decreti privatam, liberè alij conferenda.*

By occasion of which Words, the Canonists fall into a fell Contention among themselves; whether in default of presenting a Vicar for Institution, the Prebendary be *ipso jure* deprived, and the Parsonage *ipso facto* made void: Or whether the Parsonage only be voidable, and he to be deprived by the Sentence of his Superior? And the more common received Opinion is, That it is *ipso facto* void: But one of the two is certain, and which soever it be, the case of the Prebendary is harder than of the Monk; for out of the Monks Benefice, the Bishop can only take a sufficient Maintenance for the Vicar, and must leave the rest to the Monk; but to the Canon or Prebendary he leaveth nothing at all. If there be any thing left above the Vicar's Maintenance, the Bishop bestoweth it in other uses; and that not only *pro illa vice*, but also so often as the Parsonage shall fall void, during the Prebendary's Life, to the end
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he may never reap profit thereof, after neglect once committed in this kind. Again, other Patrons have six Months leisure to present; but if the Prebendary or Canon shall not present so soon, as with opportunity he may, the Ordinary taketh his advantage, and presenteth as in case of lapse. If afterwards the Canon shall come and alledge an impediment, the proof shall also lie upon himself; wherein if he fail, he shall never be relieved. *Pœna enim eo ipso committitur, quod facultatem habuit Vicarium instituendi, & non instituit*; which yet is to be understood, if the neglect be apparent and notorious; otherwise it is fit he should be summoned, to shew cause why not; and if he appear not, the Bishop may inform himself summarily, and so proceed. For it becometh not a Reverend Overseer of the Church, to do any thing, but with good Advice and Deliberation; but above all things, he must take heed that he seem not to lie at catch for an advantage against his inferior fellow Minister. The reasons given of the rigour of the Law in this point, are; First, because he deserveth no favour, which may be discharged by another, and yet is negligent in that also. And secondly,

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because *Divine* Worship is herein tendred; for *Immunitas Clericis concessa propter divinum cultum, eo ipso desinit, quod cultui divino non intendunt.*

But the question may be made: What if the Prebend should present a Vicar in due time, but yet shall not make him such allowance as the Law requireth? Whether in this case the Bishop may proceed to Privation as in the former; or only proceed by Ecclesiastical Censure, as in the case of the Monks? For mine own part, I would not at all be an Author, nor willingly a Follower of rigorous Opinions in the Law. But the words are these; *Idoneum & perpetuum habeat Vicarium canonicè institutum, qui (ut prædictum est) congruentem habeat de proventibus Ecclesie portionem: alioquin illa se sciat auctoritate hujus Decreta privatum*, which Clause as *Panormitan* affirmeth, is referred *ad omne id quod est supradictum*, and therefore must of necessity touch that which stands next unto it.

Peradventure some Man may think, that a Vicar is not necessary upon a Benefice annexed to a Dignity, if the *Dignitary* himself will reside upon it. But we must remember, that from the beginning they were not ordained, but for the cause above-mentioned: Namely, to reside always in the greater Cities,

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for the better Instruction of the People, and daily Assistance of the *Bishops* in the Government of the Church; and therefore in Law and Reason ought to reside upon the Prebend in the City, and not upon the Benefice in the Country. And this is the Resolution of *Panormitan* upon this Question. My study is not at this time to put all the Cases, and to dispute all the Questions which are made and moved by the Expositors of the Canon Law anent this Matter: Only, I would shew, That the Bishop hath as great a Right, and as absolute a Power over the Cathedral Churches, as he hath over the Successors of the Monks: And that therefore he may and must see, that their Churches be furnished with perpetual Vicars, and the Vicars competently and sufficiently provided for by these as well as by the other.

A point of Law not to be neglected in this Kingdom of *Ireland*, where there are many Prebendaries which have no perpetual Vicars at all upon their annexed Benefices: And more, which make their Curates so small Allowance, as the Monks, were they living, could not in Conscience make them less. I can answer for some of them, that they cannot make them much better, and reserve any thing for themselves. But in this
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case the Law is clear. *Quod primo subveniendum est servitio Ecclesie, secundo indulgendum necessitatibus Canoniceorum. Tolerabilius enim est, faith Bowichius, ut Canonicus egeat qui habet Curam annexam, quam Vicarius qui illam exercet.* To conclude therefore: If the Question be made, *à quo hæc congrua portio peti possit*, we may answer as *Petrus Rebuffus* doth, i. e. *Tam à Patrono exempto quam non exempto, Ecclesiastico, vel religioso, vel seculari, siue sint Monachi siue Canonici: & sic etiam à Capitulo: & generaliter ab iis qui Ecclesie proventus recipiunt.*

For all have robbed, and all must make Restitution. The Vicar or daily Minister of the Church must have sufficient Allowance out of the Tithes of his own Parish; or else God our Father is dishonoured, and our Mother the Church wronged. As for those Allowances which are now made, as good none at all, as they.

For the Mischief which cometh of these small Vicarages and Curateships is still the same: Namely, the Unlearnedness of the Ministry: For (as *Panormitan* well observeth) *Ad tenuitatem Beneficiorum necessario sequitur ignorantia Sacerdotum.* This Inconvenience was long since discovered: And thence it was that *Alexander* the third, blaming the horrible Covetise and Abuse of the Monks, which allowed not

above the sixteenth part of the Revenues of the Benefice, for the Maintenance of the Vicar, addeth this as the cursed Fruit of so vile a Stock, that thence it came to pass; *Ut in illis Regionibus penè nullus inveniretur Sacerdos parochialis qui ullam vel modicam haberet peritiam literarum.* And Clement the third upon the same occasion saith, That the exempt Monks left so small a Portion to the Vicars, that they were not able to live thereon, *propter quod saepe contingit, quod non inveniuntur persone idoneæ, quæ hujusmodi Ecclesias velint recipere; sicque frequenter minus idoneis conferuntur, ex quo pericula imminet animarum.* The Reason is plain, for *Honos alit artes.* We may flatter our selves, and say, That Men ought to take this Calling upon them, not for any worldly Respect, but only for Devotion unto God: But Experience hath ever proved, that if there be no Maintenance, there will be no Ministry. The Saying of Demosthenes to the Athenians, is sure and true. *Never look for a Man (saith he) who to do you service will undo himself; for you shall never find any such.* And therefore we may not hope that any Man will set his Son to School, and train him up in the Study of Divinity, unless there be hope of Wealth and Honour in their Age. Now from want of Learning in the Minister, proceedeth a general decay of all Reli-

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Religion. Whence it was, that (as the learned Chief Justice that late was, hath ^{L^e fleur} observed out of the Ecclesiastical History) ^{Ed. Coke,} *Julian the Apostata* having a purpose ^{en Evesq;} wholly to ruine the Profession of Christi- ^{de Winche-} anity, from which himself was by Trans- ^{sters Case.} gression fallen; used not the Sword (as *Dioclesian* and others did) but took away the means of the Clergy; knowing well that if those once failed, the number of the Preachers would not long continue. And that Prophecy of his will no doubt one day be fulfilled, where he saith, *That le decaie des revenues de saint Eglise, en le fine sera subversion del service de Dieu, & de son Religion, i.e.* That the Decay of the Revenues of holy Church, will one day be the Subversion of the Service of God, and of his Religion. For *Plowden* in his Commentaries sheweth, That the Reverend Judges of *England*, long since observed, that by the Abuse of the *Monks*, in applying all to their own Bellies, and leaving nothing to the Vicars, which yet (as he saith) were devised and ordained of purpose, to supply the Defects of the *Monks*, and others in the Ministry and Service of the Church, there crept in many Abuses: And he addeth, that, *As the Revenue of the Parish-Church decayed, so likewise did Preaching.* And this was the cause why the Emperor *Justinian* was so careful,

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ful, that the Number of his Clergy should not exceed the Proportion of means which was laid out for their Entertainment. For the end he saw would be the Beggary of the Ministry, whence could not chuse but follow the Ruine of that Holy Order, and consequently, a final Decay of true Religion. We need not pass the Seas to seek for Proof of this Assertion. What is so poor as our Clergy here in *Ireland*? I speak not of our Prelats, God increase it to them, and make it ten times more than now it is: But what is so deformed a Sight as the Face of our Ministry, which consisteth of Curates and Vicars, is? But withal, what can be more unlearned than they are? And what can be more irreligious, or less understanding of what belongeth to God and Godliness than the People is? Which could not be, if there were Men among them to teach and to instruct them: For the People is as capable of Instruction as any other: And where they come to be informed of the Truth, are as zealous thereof, as any Nation in the World. This Mischief is great, and the Injury and Injustice whence it proceedeth, is no less. For wherefore are Tythes given, but in Consideration and Recompence of preaching the Word, and ministring the *Sacraments* to those which

which give them? *Is it a great thing* (saith St. Paul) *if when we sow spiritual things, we reap carnal things?* Preaching therefore, and other Divine Service, is the thing in lieu whereof the Tythes are paid unto the Minister. And our Lawyers affirm, that *Beneficium non debetur nisi propter officium*. What Justice therefore, that a Man should part with a *Tenth* of all that God hath given him, in bargain to have the Word of God truly preached to him, and yet be defrauded of that also? And the worse is, that the greater the Parish was, and the greater the Charge which it was at, in this regard, the worse were they served, and the less Respect was ever had unto them: For even as heretofore, the whiter the Cow, the sooner she came unto the Altar; so the fairer the Benefice, the more in danger was it ever of *Appropriation*. And as in the Sack of a City, the fairest of every kind is soonest made a Spoil unto the Soldier: So in that *Invasion*, which the Regular Clergy made upon the Churches, the greatest and richest Benefices were the first made a Prey unto the Monks: And the poor Parishioners, instead of a Man of Learning and Wisdom, by whom they might be taught and advised in things belonging to this Life, and the Life to come; were turned over to be served by them, which were scarce worthy to serve Horses. This Saddle was put upon the Peoples Backs, by persuading them that the Pope was CHRIST's Vicar here on Earth, and by Virtue of that Office, had Power in himself to dispose of all things belonging to the Church. The Jesuites go further, and teach, that he is the Lord and Master of all together. But the Sorbonists at Paris, as well in their late Action against them, as heretofore in the Year 1429. in the case of John Sarrazin, a Friar

Friar Predicant ; and at sundry other times have opposed themselves against this unbridled and unlimited Power of the Popes. And the Churches of *France* by their Example animate their Kings and Courts of Parliament to do the like ; and to withstand their Usurpation, which never tended but to the establishing of a Monarchy in that See, with the Ruine of other Churches.

The ends which the *Popes* pretended in these Appropriations, were, Increase of Religion, and Hospitality: What good Religion hath reaped by them, hath been already shewed : And as for Hospitality, *Plowden* saith, That Improprations were the Decay thereof, especially in those Places where it ought principally to have been kept, that is, in the Parishes themselves. Had we lived in those Days, no doubt we would not have done as our Predecessors did : But hereby are we Witnesses against our selves, that we are the Successors of them which did such things : We have indeed divided the Sin with them : They were the Robbers, and we are the Receivers : They took from the Church, and we enjoy it ; and I wonder, that following their Example, we do not fear their end.

To conclude : If this Course be legal, and may be taken for the better Maintenance of the poor Clergy in this miserable Kingdom, well and good. If not : God grant some other may ; for if none be, farewell Religion : And what can then ensue, but the Abomination of Desolation in the highest Places of this Kingdom ? Which GOD forbid.

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Sit Laus Deo.

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